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***Electronically Filed on  
September 26, 2009***

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on behalf of Susan L. Kehl and Andrew R. Kehl;  
Christina M. Kehl; Patrick J. Anglin; Cynthia A.  
Winter; Kehl Development Corporation; Judy A.  
Bonnet; Kevin A. McKee; Pamela J. McKee;  
Warren Hoffman Family Investments, LP;  
Charles B. Anderson, as trustee of the Charles B.  
Anderson Trust; Rita P. Anderson, as trustee, of  
the Rita P. Anderson Trust; Baltes Company;  
Mojave Canyon, Inc.; Richard R. Tracy and  
Ursula W. Tracy; Reno Aeronautical Corporation  
Defined Benefit Pension Plan; Donna Cangelosi,  
Tito Castillo, Tony Chaudhry, Jonathan Eller,  
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Arthur Kriss, Joe LaFayette, Janice Lucas,  
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Newman, Edward Schoonover, Carol Simon,  
Lawrence Tengan, Connie Westbrook, Ken  
Zawacki, Alfie Fujitani, Walt Musso, Cyril  
Tammadge, and Robert Fuller (collectively, the  
"Direct Lenders")

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE:

USA COMMERCIAL MORTGAGE  
COMPANY,

DEBTOR,

3685 SAN FERNANDO LENDERS, LLC, ET AL.,

PLAINTIFFS,

VS.

COMPASS USA SPE LLC, ET AL.,

DEFENDANTS.

CASE NO. 2:07-CV-00892-RCJ-GWF

*Bankr. Case No. 06-10725-LBR*

**THIRD AMENDED COMPLAINT AND  
JURY DEMAND**

1 Plaintiffs, through their respective counsel, Bickel & Brewer, Jones Vargas, and the Law  
2 Office of Lisa Rasmussen, hereby aver and seek relief as set forth below:

3 **I.**

4 **GENERAL AVERMENTS**

5 **A. Jurisdiction and Venue.**

6 1. The United States District Court has subject matter jurisdiction over this action  
7 pursuant to 28 U.S.C. §§ 1331 and 1332(a).

8 2. Pursuant to 28 U.S.C. § 2201, *et seq.* (the Federal Declaratory Judgment Act), this  
9 Court has jurisdiction to declare the rights and legal obligations of the interested parties.

10 3. Venue for this case in this district is proper pursuant to 28 U.S.C. § 1391.

11 **B. The Parties.**

12 4. Plaintiffs are, respectively, Nevada limited liability companies (“LLCs”), individuals,  
13 trust funds created in Michigan, companies incorporated in Michigan and Nevada, a corporation  
14 incorporated in Iowa, and a limited partnership formed in Iowa. All Plaintiffs are direct  
15 lenders/investors in certain investments made through USA Commercial Mortgage Company  
16 (“USACM”). These investments were in the nature of direct loans to third-party borrowers secured  
17 by real property and, sometimes, improvements. These loans were brokered by USA Commercial  
18 Mortgage Company (“USACM”). The members of the Plaintiff LLCs are all direct  
19 lenders/investors who originally invested with USACM, but assigned their interest in the loans to  
20 the LLCs in order to consolidate and unite to protect themselves and their investments from the  
21 actions of Defendants as alleged herein. The members of the Plaintiff LLCs, or their predecessors in  
22 interest, are named as payees on certain Promissory Notes and Deeds of Trust evidencing and  
23 perfecting the secured loans brokered by USACM. Each Plaintiff LLC is a direct lender/investor in  
24 a separate and distinct loan. (As used herein, the term “Plaintiff” or “Plaintiffs” shall refer to the  
25 named Plaintiffs in this case, including the LLCs, and the direct lender individuals or entity  
26 Plaintiffs, as contextually appropriate.)  
27  
28

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5. Plaintiffs Richard R. Tracy and Ursula W. Tracy, husband and wife with rights of survivorship, and Richard R. Tracy, as Trustee of Reno Aeronautical Corporation Defined Benefit Pension Plan, are residents of the State of Nevada.

6. Plaintiff LeAnn Apigian is a resident of the State of Washington.

7. Plaintiff Ed Burgess is a resident of the State of Arizona.

8. Plaintiff Donna Cangelosi is a resident of the State of Nevada.

9. Plaintiff Tito Castillo is a resident of the State of Florida.

10. Plaintiff Tony Chaudhry is a resident of the State of Washington.

11. Plaintiff Victoria Conway is a resident of the State of California.

12. Plaintiff Jonathan Eller is a resident of the State of California.

13. Plaintiff Alfie Fujitani is a resident of the State of Nevada.

14. Plaintiff Robert Fuller is a resident of the State of Nevada.

15. Plaintiff Robin Graham is a resident of the State of California.

16. Plaintiff Don Hess is a resident of the State of Florida.

17. Plaintiff Brigitte Kaneda is a resident of the State of California.

18. Plaintiff Christina Knoles is a resident of the State of Colorado.

19. Plaintiff Arthur Kriss is a resident of the State of Utah.

20. Plaintiff Joe LaFayette is a resident of the State of California.

21. Plaintiff Janice Lucas is a resident of the State of California.

22. Plaintiff Charles Maraden is a resident of the State of Nevada.

23. Plaintiff Carol Mortensen (f/k/a Kesler) is a resident of the State of Utah.

24. Plaintiff Walt Musso is a resident of the State of California.

25. Plaintiff Daniel Newman is a resident of the State of Arizona.

26. Plaintiff Kevin Olson is a resident of the State of Nevada.

27. Plaintiff Edward Schoonover is a resident of the State of Washington.

28. Plaintiff Carol Simon is a resident of the State of Nevada.

29. Plaintiff Rodger Stubbs is a resident of the State of Florida.

30. Plaintiff Cyril Tammadge is a resident of the State of California.

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31. Plaintiff Stan Tara is a resident of the State of Nevada.

32. Plaintiff Lawrence Tengan is a resident of the State of Nevada.

33. Plaintiff Buck Wahl is a resident of the State of California.

34. Plaintiff Connie Westbrook is a resident of the State of Washington.

35. Plaintiff Craig Wisch is a resident of the State of Connecticut.

36. Plaintiff Ken Zawacki is a resident of the State of California.

37. Defendant Compass USA SPE, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

38. Defendant Compass Partners, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York. (Compass USA SPE, LLC and Compass Partners, LLC are collectively referred to herein as “Compass”).

39. Defendant David Blatt (“Blatt”) is a resident of the State of New York and is a member and manager of Compass.

40. Defendant Boris Piskun (“Piskun”) is a resident of the State of New York and is a member and manager of Compass.

41. Defendant Silar Advisors, LP is a limited partnership organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

42. Defendant Silar Special Opportunities Fund, LP is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York (hereafter, Silar Advisors, LP, and Silar Special Opportunities Fund, LP shall collectively be referred to as “Silar”).

43. Defendant Asset Resolution, LLC (“Asset Resolution”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

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**C. General Background.**

44. USA Commercial Mortgage Company, defined above as USACM, which sometimes did business under the name “USA Capital,” was formed as a Nevada corporation in 1989 and was in the business of underwriting, originating, brokering, funding and servicing short term (typically one year or less) commercial loans primarily secured by residential and commercial developments, on behalf of private investors/direct lenders.

45. On January 11, 1990, USACM obtained a license to act as a mortgage broker/agent in the State of Nevada under NEVADA REVISED STATUTES Chapter 645B (2005) and NEVADA ADMINISTRATIVE CODE Chapter 645B (2007).

46. USACM routinely advertised and promoted, through sales and marketing literature, high-yield secured investments and represented that no investors had ever lost money in their investments with USACM.

47. On April 13, 2006, USACM filed a Chapter 11 Petition for bankruptcy in the Bankruptcy Court for the District of Nevada, Las Vegas, together with four other entities related to USACM (hereinafter collectively referred to as the “USA Bankruptcy Cases”).

48. At the time USACM filed its bankruptcy petition, approximately 3,600 investors were “lenders” in one or more loans originated and serviced by USACM. These 3,600 investors are commonly referred to as “direct lenders.”

49. The loans brokered by USACM on behalf of the direct lenders are each evidenced by a “Promissory Note Secured By a Deed of Trust” or a “Promissory Note Secured By a Mortgage” (respectively, the “Promissory Note”), which were executed by third-party borrowers in favor of the direct lenders (or their predecessors in interest) in each loan. All loan documents, including the Promissory Notes, expressly provide that they are governed by Nevada law.

50. At the time USACM brokered direct loans, each lender/investor and USACM entered into various Loan Servicing Agreements (“Loan Servicing Agreements” or “LSAs”) pursuant to which USACM would service the loans it brokered on behalf of direct lenders. Per USACM’s requirements, each direct lender was supposed to execute a single Loan Servicing Agreement that covered, or purported to cover, every investment made by that direct lender with

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1 USACM over time. All Loan Servicing Agreements expressly provide that they are governed by  
2 Nevada law. However, on information and belief, and based upon an audit conducted by the State  
3 of Nevada, Department of Business and Industry, Division of Mortgage Lending (“NMLD”), a  
4 substantial number of direct lenders never executed Loan Servicing Agreements. Additionally,  
5 there are various forms of the Loan Servicing Agreements, which include differences in several key  
6 provisions (such as servicing fees ranging from 0% to 4%). The consequence of USACM’s  
7 documentation was that most or all of the loans were serviced by a single servicer operating under  
8 multiple, inconsistent Loan Servicing Agreements.

9 51. At the time USACM filed its bankruptcy petition, the loan portfolio it was servicing  
10 pursuant to the Loan Servicing Agreements consisted of approximately 115 loans having a  
11 combined outstanding principal balance of approximately \$960 million. Most of the original direct  
12 lenders invested in more than one of the serviced loans, with there being an average of  
13 approximately three to four loans for each direct lender.

14 52. During the course of the USA Bankruptcy Cases, USACM admitted that it had  
15 breached the Loan Servicing Agreements, breached its fiduciary duties and violated Nevada state  
16 law prior to filing its bankruptcy petition.

17 53. As a result of USACM’s fraudulent misrepresentations and conduct, 100% of the  
18 portfolio of loans USACM brokered are in default. This fact is in stark contrast to the national  
19 default rate for commercial loans, which is approximately 1.5%.

20 54. On or about September 22, 2006, USACM filed its Motion for Order Scheduling an  
21 Auction for the Sale of Certain Assets, Appointing SPCP Group, LLC, as Lead Bidder, and  
22 Approving Bid Procedures and Protections in the Bankruptcy Case, in which USACM sought to  
23 establish the parameters for the sale of certain assets in the USA Bankruptcy Cases, primarily  
24 consisting of valuable assets of a related debtor, the First Trust Deed Fund. The Bankruptcy Court  
25 entered an Order: (A) Scheduling an Auction for the Sale of Certain Assets; (B) Appointing SPCP  
26 Group, LLC, as Lead Bidder; and (C) Approving Bid Procedures and Protections, Approving  
27 Bidding Procedures (“Order Scheduling Auction”) on November 8, 2006. The stalking horse bidder  
28

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1 agreed to honor the obligations of USACM under the Loan Servicing Agreements as part of the sale,  
2 but did not attribute any of its initial bid price to the Agreements.

3 55. After the Order Scheduling Auction was entered, but prior to the auction's being  
4 conducted, Mesirow Financial Interim Management ("MFIM"), the Bankruptcy Court's appointed  
5 manager for USACM, prepared calculations of the potential default interest under the loans.

6 56. Upon information and belief, USACM did not collect default interest (which,  
7 according to the majority of the Loan Servicing Agreements, is waivable at the option of the direct  
8 lenders) upon discounted settlement of a loan – *i.e.*, where less than 100% of principal and interest  
9 was paid by the borrower. USACM's pattern and practice of not collecting default interest upon  
10 discounted loan settlements conform with industry standards.

11 57. Upon information and belief, Compass became aware of the opportunity to purchase  
12 the USACM assets through its business dealings with direct lenders whereby Compass bought  
13 certain direct lenders' loan interests at discounted rates.

14 58. The Bankruptcy Court conducted an auction of various assets of the USA Bankruptcy  
15 Cases on December 7, 2006.

16 59. Compass was the successful bidder at the auction and, on February 16, 2007 (the  
17 "Closing Date"), acquired substantially all of the assets of USACM and its related debtor, the First  
18 Trust Deed Fund ("FTDF"), in exchange for approximately \$67 Million. The Compass bid was  
19 apparently broken down by an initial bid of \$48 million for the FTDF assets and \$8 million for the  
20 loan servicing rights under the Loan Servicing Agreements and other fees ("Purchased Assets").  
21 The remaining amounts were to be allocated by an over-bid agreement between FTDF and USACM,  
22 which was filed under seal, and a break-up fee of \$1.5 million to the stalking horse bidder. The  
23 sale was expressly conditioned upon confirmation of the USACM's Chapter 11 Plan of  
24 Reorganization (the "Plan"), which was confirmed by an order of the Bankruptcy Court entered on  
25 January 8, 2007 (the "Confirmation Order").

26 60. The USACM Plan effectively compromised<sup>1</sup> and released all claims of USACM and  
27 its affiliated debtors against the direct lenders, which would include all fees (*e.g.*, loan servicing  
28

<sup>1</sup> The compromise required the class of direct lenders to surrender their rights to "prepaid  
3<sup>rd</sup> AMENDED COMPLAINT



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1 fees, success fees) and/or claims for default interest under the various Loan Servicing Agreements  
 2 accrued but unpaid as of the Effective Date of the Plan. Consequently, such released or waived  
 3 rights to claim and collect pre-Effective Date fees and interest were not conveyed to Compass when  
 4 it purchased USACM's surviving compensation rights under the Loan Servicing Agreements, and  
 5 the only such fees and default interest claims purchased by Compass were those accruing **after** the  
 6 Effective Date of the Plan.

7 61. On information and belief, Compass subsequently sold, transferred and conveyed all  
 8 right, title, and interest in the Purchased Assets to Silar. Such transfer of interest had the effect of  
 9 passing to Silar all benefits and burdens, and all rights and obligations, of the "Servicer" under the  
 10 Loan Servicing Agreements. Compass has subsequently acted as subservicer for Silar pursuant to  
 11 such engagement, although Compass has always identified itself as "the servicer." Accordingly, any  
 12 and all allegations of breaches of duty and other claims and causes of action contained in this Third  
 13 Amended Complaint against Compass apply to Silar with equal force and effect, and Silar is liable  
 14 to Plaintiffs to the same extent and upon the same grounds as Compass is liable, either directly,  
 15 under the doctrine of *respondeat superior*, or pursuant to principles of agency.

16 62. Other than certain conditions not germane to this action, the Loan Servicing  
 17 Agreements were transferred to Compass and Silar without any modification whatsoever, a fact  
 18 frequently affirmed by the presiding bankruptcy judge.

19 63. Compass was not able to obtain a mortgage broker/agent license from the State of  
 20 Nevada, Mortgage Lending Division, as required by the Asset Purchase Agreement. As a result, in  
 21 February 2007, Compass entered into a sub-servicing agreement with USACM. The sub-servicing  
 22 agreement, among other things, allowed for USACM to provide administrative functions, while  
 23 negotiations with borrowers, foreclosures, or other legal proceeding were left to Compass. As  
 24 acting servicer, Compass was responsible for the actions of its sub-servicer USACM.

25  
 26 interest" back to the USACM bankruptcy estate in exchange for the debtor's releases of all other  
 27 claims against the direct lenders pursuant to the Loan Servicing Agreements. *See* Debtor's Third  
 28 Amended Joint Chapter 11 Plan of Reorganization, Case No. BK-S-06-10725 LBR, Doc. No.  
 1799, II(C)(1)(e)(ii); *see also* Debtor's First Amended Disclosure Statement for Debtor's Third  
 Amended Joint Plan of Reorganization (Affects All Debtors), Case No. BK-S-06-10725 LBR,  
 Doc. No. 1798, IX(B)(2)(a)(v).



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64. In May 2007, the NMLD entered a formal *Order Revoking Mortgage Broker License And Notice of Right To Request Hearing*, pursuant to which USACM's license to act as a mortgage broker/agent in Nevada was revoked and in which the State described USACM as having instituted "a calculated, self-serving deceptive scheme that was enacted to allow the Principals to potentially profit with no risk, while astronomical risk inured to the unsuspecting lenders." On May 9, 2007, a formal *Order Imposing Fine And Order To Cease And Desist And Notice of Right To Request Hearing* was entered. Pursuant to this Order, Compass was ordered to cease and desist all mortgage lending/agent activities in Nevada.

65. Also in May 2007, and pursuant to NEV. ADMIN. CODE § 645B.073, direct lenders owning more than 51% of the beneficial interests in certain loans exercised their right to replace Compass and/or Silar as loan servicer to their respective loans.

66. On or about September 26, 2008, Silar purported to foreclose on the assets of Compass. To accomplish the foreclosure, Silar created Asset Resolution and conveyed all of its interest in USACM's assets to Asset Resolution. As a result, Asset Resolution expressly assumed all responsibilities and obligations to service USACM's loan portfolio. Accordingly, any and all allegations of breaches of duty, or other claims and causes of action contained in this Third Amended Complaint against Asset Resolution, apply to Silar with equal force and effect, and Silar is liable to Plaintiffs to the same extent and upon the same grounds as Asset Resolution is liable, either directly, under the doctrine of *respondeat superior*, or pursuant to principles of agency.

**D. Facts Relating To Compass's Conduct As Servicer And Involvement Of Other Defendants.**

**1. Compass, its Managers, and Silar Owe Fiduciary Duties to Plaintiffs.**

67. Compass has represented in a declaration submitted by Blatt that it is a national firm with over 200 employees which acquires over \$100 million in loan interests every year. Blatt and Piskun, as managers of Compass, control and direct Compass's actions, policies, and strategies.

68. Silar, together with its principals, has a substantial background in the lending industry in numerous asset classes, including consumer, residential and commercial assets. Silar provided financing to Compass for the Purchased Assets, and, upon information and belief,

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1 provided guidance, oversight, and conducted due diligence in connection with the financing.  
2 Additionally, as stated above upon information and belief, Silar bought all rights, titles and interests  
3 in the Purchased Assets from Compass, thereby becoming the true “Servicer” of the USACM loans.  
4 Silar subsequently engaged Compass as its subservicer for the loans, although Compass has always  
5 identified itself as “the servicer.”

6 69. Compass completed extensive due diligence on the loans in order to formulate its bid  
7 for the FTDF assets. Upon information and belief, Silar was aware of the results of such due  
8 diligence and loaned substantial funds to Compass for the purpose of entering into the Asset  
9 Purchase Agreement.

10 70. On February 16, 2007, Compass issued a press release in which it stated that the  
11 actual value of the assets purchased from USACM and FTDF was more than \$150 million. Based  
12 on the full note value of \$62,652,742 for the FTDF assets, not allowing for any borrower defaults, it  
13 can be deduced that Compass expected at that time well in excess of \$87 million in profit to be  
14 realized from the loan servicing rights alone (for which Compass had paid a mere \$8 million).  
15 However, documents produced by Compass indicate that Compass hopes to extract for itself (and  
16 Silar) more than \$130 million in profit from those same loan servicing rights.

17 71. As a purported loan servicer, Compass’s capabilities and experience directly affect  
18 the underlying performance of the loans. Further, as a purported loan servicer, Compass acts as an  
19 agent to Plaintiffs and other direct lenders and, therefore, assumes fiduciary responsibilities owed to  
20 Plaintiffs and other direct lenders. These fiduciary duties are also assumed by Blatt and Piskun as  
21 managers of Compass, as well as by Silar, the true loan servicer.

22 72. Compass’s strategy and approach for servicing the loans (and extracting its projected  
23 “profit” noted above) has created a distinct and substantial conflict of interest between and among  
24 Compass, Blatt, Piskun, on the one hand, and Plaintiffs, on the other hand, as well as between and  
25 among Silar, on the one hand, and Plaintiffs, on the other hand.

26 73. Blatt and Piskun have controlled and authorized the objectives of Compass, directed  
27 its conduct, and participated in its actions (including Compass’s inappropriate acts and conspiracy  
28 participation) in their official capacity as managers and directors of the company. In this way, Blatt

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1 and Piskun have understood, developed, and agreed to the objectives of the conspiracy, as well as  
 2 Compass's role and their own personal roles in it. Blatt and Piskun have worked through Compass  
 3 with the purpose and goal of harming Plaintiffs and depriving them of loan proceeds, in violation of  
 4 their fiduciary duties to Plaintiffs.

5 74. Blatt and Piskun have also acted outside of the scope and authority of their  
 6 employment for their own advantage by spreading false, fraudulent, and misleading information  
 7 amongst direct lenders through internet sites, chat rooms, telephone conference calls, and email and  
 8 by generally "spying" on direct lenders. To facilitate their spying and distribution of false,  
 9 fraudulent, and misleading information Blatt and Piskun have used false IDs and email addresses.  
 10 Such actions are clearly outside of the course and scope of Blatt's and Piskun's employment and are  
 11 in violation of their fiduciary duties to Plaintiffs.

12 **2. Compass and Silar's business strategy to collect fees.**

13 75. Compass, its individual managers (Blatt and Piskun), and Silar have formed an  
 14 association-in-fact through which they have agreed and conspired to participate in a series of  
 15 concerted activities with the intent to defraud and harm Plaintiffs, thereby gaining a substantial  
 16 monetary windfall for themselves. In order to effectuate this plan and conspiracy, Compass and its  
 17 individual managers (Blatt and Piskun), with full knowledge, support, and agreement of the true  
 18 loan servicer, Silar, has put into action a business strategy to extract value from the collateral  
 19 pledged by third-party borrowers to Plaintiffs and other direct lenders by attempting to deduct  
 20 default interest, late fees, loan origination fees, and other fees (including pre-petition interest and  
 21 fees which it did **not** acquire in its purchase from USACM and FTDF) from loan payoffs and/or  
 22 collateral proceeds **before** remitting amounts due to all Plaintiffs and other direct lenders. This  
 23 practice is in direct conflict with: (a) the loan documents (Promissory Notes, Deeds of Trust, and  
 24 Loan Agreements); (b) the Loan Servicing Agreements; (c) the intent of the parties to the loans, (d)  
 25 various other agreements; (e) the historical practices of USACM both prior to and during its  
 26 bankruptcy; (f) the current practices of the USACM post-bankruptcy trust; (g) long established  
 27 lending industry standards and practices; and (h) Compass's, its managers', and Silar's fiduciary  
 28 duties and obligations to Plaintiffs.

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1           76. Pursuant to Section 5 of some, but not all, of the Loan Servicing Agreements, the  
2 loan servicer may retain, as compensation for servicing loans (depending on which form of the Loan  
3 Servicing Agreement was executed by those direct lenders): (a) a servicing fee varying between 0-  
4 4% per annum; and (b) any late charges and default interest collected from the borrower. However,  
5 late charges and default interest may be collected **only** if the direct lenders exercise their option to  
6 charge default interest and/or late fees, and then only if default interest and/or late fees are actually  
7 collected from the borrower over and above principal and accrued interest. No Loan Servicing  
8 Agreement provides for the recovery of certain of the fees now claimed by Compass (*e.g.*, “success”  
9 or “exit” fees). Further, pursuant to Section 4 of most of the Promissory Notes, all payments on the  
10 Promissory Notes are to be applied **first** toward the payment of regular accrued interest and then to  
11 principal.

12           77. The cumulative unpaid principal balance on the loans in which Plaintiffs are direct  
13 lenders is currently in excess of \$485 million. The servicing fees and default interest fees, to which  
14 Compass claims it is entitled, accrues at approximately 10% or more per annum. With this financial  
15 windfall in mind and upon information and belief, Compass and its managers (and Silar, as the true  
16 loan servicer) choose, to the substantial detriment of Plaintiffs and other direct lenders, to either do  
17 nothing to collect loan payments or to delay resolution of loans in order to allow greater default  
18 interest and late fees to accrue. A number of the loans in which Plaintiffs are direct lenders are  
19 currently, or have been in the past, in this untenable position. There appear to have been several  
20 times in which borrowers have attempted, or have offered, to pay in full or otherwise resolve loans,  
21 but Compass and its managers (and Silar, as the true loan servicer) have failed and refused to  
22 negotiate resolutions of such loans with the borrowers. Compass’s and its managers’ (and Silar’s,  
23 as the true loan servicer) apparent failure and refusal to work with borrowers to resolve defaulted  
24 loans further injures Plaintiffs because such behavior exposes Plaintiffs and other direct lenders to  
25 lender liability claims and litigation. Some borrowers have already filed such suits against Plaintiffs  
26 and other direct lenders on certain loans and additional suits have been threatened against Plaintiffs.

27           78. Additionally, in order to continue accruing default interest and other fees for their  
28 own benefit, Compass and its managers (and Silar, as the true loan servicer) have failed to timely

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1 communicate to Plaintiffs and other direct lenders certain offers made by borrowers to repay their  
2 debts to the direct lenders. Additionally, Compass and its managers (and Silar, as the true loan  
3 servicer) have misrepresented the status of loans to Plaintiffs and other direct lenders for the  
4 purpose of coercing the Plaintiffs and other direct lenders to agree to modifications to loan  
5 documents, resulting in additional, undisclosed fees to Compass, its managers, and Silar. Further,  
6 Compass and its managers (and Silar, as the true loan servicer) have refused to process previously  
7 achieved direct lender/borrower settlement agreements.

8         79. Upon information and belief, Compass, its managers, and/or Silar have knowingly  
9 made advances to borrowers and other third parties on certain loans on behalf of Plaintiffs and other  
10 direct lenders, which it was not authorized to make.

11         80. Compass and its managers (and Silar, as the true loan servicer) have also demanded  
12 immediate payment of servicer advances from Plaintiffs and other direct lenders without providing a  
13 full explanation or an accounting for the service advances.

14         81. Further, Compass and its managers (and Silar, as the true loan servicer) have  
15 subjected some Plaintiffs and other direct lenders to foreclosures upon their collateral, unapproved  
16 default interest, and other fees and expenses without the express authorization of Plaintiffs and other  
17 direct lenders. These, and other, self-interested actions have placed Plaintiffs' and other direct  
18 lenders' principal investments/loans at substantial risk.

19         82. Additionally, Compass, its managers, and Silar are aware of NEV. ADMIN. CODE §  
20 645B.073 (2007) and have attempted to take advantage of its provisions by acquiring or seeking to  
21 acquire 51% of the beneficial interests in certain loans to prevent Plaintiffs and other direct lenders  
22 from removing Compass as loan servicer. These actions violate Compass's fiduciary duties to  
23 Plaintiffs and other direct lenders.

24         83. Since taking over as loan servicer, Compass and its managers (and Silar, as the true  
25 loan servicer) appear to have knowingly used to their benefit, and to the detriment of Plaintiffs and  
26 other direct lenders, a three-day deadline and other very short deadlines for direct lender responses  
27 to loan resolution offers, even when substantially more time was feasible, in breach of the Loan  
28

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1 Servicing Agreements. This action violates Compass's, its managers', and Silar's fiduciary duties  
2 to Plaintiffs and other direct lenders.

3 **3. Borrower payments and interest earning accounts.**

4 84. Upon information and belief, Compass, its managers, and/or Silar have negotiated  
5 with borrowers for their own benefit, pursuant to which Compass, its managers, and Silar  
6 knowingly, and in collaboration with one another, would receive loan payoff proceeds from  
7 borrowers when Plaintiffs and other direct lenders were not receiving full principal and interest  
8 payments from the borrowers. These proceeds are rightfully due and owing to Plaintiffs and other  
9 direct lenders.

10 85. Upon information and belief, Compass, its managers, and Silar have collaborated on  
11 the formation of Compass's business plan, as well as the development of a strategy whereby  
12 Compass and Silar would work together to receive loan payoff proceeds from borrowers (which are  
13 due and owing to Plaintiffs and other direct lenders) and direct them instead to Silar in payment of  
14 Silar's financing of Compass's acquisition of the Purchased Assets. Despite knowledge that their  
15 actions harm Plaintiffs and other direct lenders, Compass, its managers, and Silar have put this  
16 business plan/strategy into action by working together to direct borrowers to transmit any and all  
17 loan payments (including payments of principal, regular accrued interest, default interest, late fees,  
18 and other fees) directly to an account held and controlled by Silar (the "Silar Account"). These loan  
19 payments are specifically identifiable funds paid by borrowers in satisfaction of the requirements in  
20 the Promissory Notes underlying specific loans. The Silar Account is an interest bearing account in  
21 which Silar earns money on funds due and owing to Plaintiffs and other direct lenders. Silar retains  
22 the interest earned on these funds.

23 86. Additionally, the loan proceeds improperly held by Silar have been knowingly and  
24 improperly commingled with Silar's and Compass's own monies. Upon information and belief,  
25 Silar transfers money from the Silar Account directly to Silar's own investors. Further, certain  
26 monies commingled in this account do not come from borrower payments but instead from deposits  
27 made by third-parties unaffiliated with Plaintiffs and other direct lenders. Although the account is  
28 controlled by Silar, Compass and its managers have knowingly allowed commingling to occur and,

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1 in fact, supported and enabled the commingling. These actions have been done with the specific  
2 intent to deprive Plaintiffs of their right to and security in their funds.

3 87. Upon information and belief, at the request of Compass and its managers and at  
4 various intervals, Silar transfers money from the Silar Account into an interest bearing account (the  
5 “Maximizer Account”) controlled by Compass and Compass holds these funds due and owing to  
6 Plaintiffs and other direct lenders for an unspecified period of time solely to earn interest. For  
7 example, on or about July 18, 2007, Silar made a wire transfer of \$3,216,204.61 to Compass’s  
8 Maximizer Account. Upon information and belief, Silar knows that this Maximizer Account is  
9 solely used to earn interest on funds not belonging to Silar or Compass. Compass later transfers  
10 monies due and owing to Plaintiffs and other direct lenders to its self-described “Disbursement  
11 Account,” but retains all interest earned on Plaintiffs’ and other direct lenders’ funds while in the  
12 Maximizer Account. Compass eventually remits the funds in the Disbursement Account to  
13 Plaintiffs and other direct lenders, sometimes after the time required by Nevada law. This practice  
14 is in violation of Nevada law and Compass’s, its managers’, and Silar’s fiduciary duties, and has  
15 injured Plaintiffs and will continue to injure Plaintiffs until judicial relief is obtained.

16 88. In addition, upon information and belief, many of the fund transfers requested by  
17 Compass from the Silar Account (in which the loan proceeds belonging to the Plaintiffs are held and  
18 controlled by Silar) do not correlate by time or amount with loan payments made by the borrower.  
19 These specific loan payments are due and owing to the direct lenders. Through Compass’s, its  
20 managers’, and Silar’s actions, Plaintiffs are deprived of the actual borrower payments to which they  
21 are entitled and/or do not receive such payments in a timely manner.

22  
23  
24  
25 **4. Compass’s failure to provide legally required information and Compass’s**  
26 **dissemination of materially false and misleading information.**

27 89. Pursuant to NEV. REV. STAT. § 645B.185, each investor in USACM was required to  
28 receive and sign a Mortgage Investment Disclosure Form, approved by the NMLD. As detailed in



1 the Mortgage Investment Disclosure Form, a mortgage broker/agent operating in Nevada is required  
2 to inform investors, among other things, that:

- 3 a. "You are entitled to receive information regarding the  
4 mortgage broker you are dealing with," including the most  
5 recent financial statements.
- 6 b. "A Mortgage Broker performing loan servicing has an  
7 obligation to account to the borrower and every investor for  
8 money collected and disbursed in the exercise of that  
9 function."
- 10 c. "When the borrower on a mortgage loan fails to make  
11 required payments, the actions an investor can take, or that a  
12 servicing agent can take on behalf of an investor, are  
13 determined by provisions of Nevada Law and the documents  
14 and instruments evidencing the mortgage loan."

15 90. Plaintiffs and other direct lenders did not receive the benefit of the Mortgage  
16 Investment Disclosure Form as it relates to Compass (or to Silar, as the true loan servicer), nor have  
17 they received the required disclosures from Compass (or Silar). Non-exclusive examples of this  
18 include:

- 19 a. Upon request, Compass and its managers have refused to disclose to  
20 Plaintiffs and other direct lenders, or to provide an accounting of, any  
21 compensation they (or Silar) are receiving, including the amount of default  
22 interest, late fees and other fees they have received in connection with loan  
23 payoffs;
- 24 b. Plaintiffs and other direct lenders have been provided with limited  
25 information regarding Compass (and none at all regarding Silar) since  
26 Compass began servicing the loans, and Compass and its managers have  
27 refused requests for information about Compass or its practices;
- 28 c. Plaintiffs and other direct lenders have not been able to obtain any financial  
information concerning Compass, yet Compass was entrusted with nearly  
\$750 million dollars of direct lenders' money;

91. Despite the fact that many of the loans in the USACM loan portfolio were in term  
default, and others have gone into term default since Compass has taken over as loan servicer,  
Compass (and Silar, as the true loan servicer) has failed to make monthly reports to the NMLD and  
to Plaintiffs regarding loan delinquencies as required under NEV. REV. STAT. § 645B.260. In  
addition, Compass (and Silar, as the true loan servicer) appears to have failed to produce, keep and

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maintain records and reports required by NEVADA REVISED STATUTES Chapter 645B and the Loan Servicing Agreements.

92. Upon information and belief, Compass and its managers have circulated self-interested offers to purchase Plaintiffs' and other direct lenders' interests, at substantial discounts, but have not provided Plaintiffs and other direct lenders with all of the material terms of the offers nor all of the loan information necessary to make an informed decision, including sufficient loan status reports.

93. Upon information and belief, Compass and its managers have knowingly circulated to Plaintiffs and other direct lenders, both directly through the United States mail and through Compass's website, misleading and materially incomplete information outside of the ordinary course and scope of business, purportedly for the purpose of reporting on legal proceedings in this matter, but in reality and in effect for the purpose of and with the intent to cause confusion, fear, distrust, dissention, and conflict among the direct lenders and to cause disruption of their organization, communications, and legal actions in this case.

##### 5. Power of attorney.

94. Each direct lender (or predecessor in interest of each direct lender) executed a power of attorney in favor of USACM when making their investments/loans. Those powers of attorney expressly expire on the **maturity date of each related loan**. Furthermore, at the time the Loan Servicing Agreements were transferred to Compass, many of the loans in the USACM loan portfolio were in term default, and others have since gone into term default. As a result of the term default of various loans in the USACM portfolio, Compass no longer has a valid power of attorney to act on behalf of direct lenders as required under NEV. REV. STAT. § 645B.330. Compass has not executed any written extension of any of the Powers of Attorney.

95. Despite the fact no valid power of attorney exists authorizing Compass to act on behalf of Plaintiffs and other direct lenders, Compass continues to hold itself out as a representative/agent of Plaintiffs (and other direct lenders) to borrowers, title companies and others. Upon information and belief, Compass and its managers, without the power to do so, have negotiated payoffs, filed lawsuits and executed satisfactions and releases on behalf of Plaintiffs and

1 other direct lenders. Moreover, Compass has allegedly acted or purported to act on multiple loans  
 2 pursuant to a single power of attorney per direct lender in direct violation of § 645B.330.

3 96. The practices of Compass and its managers (and Silar, as the true loan servicer), as  
 4 exemplified above, are in direct conflict with Nevada state laws, loan documentation (Promissory  
 5 Notes, Deeds of Trust, and Loan Agreements), Loan Servicing Agreements, intent of the parties to  
 6 the loans, various other agreements, long established industry standards and practices, and their  
 7 fiduciary duties and obligations.

8 **E. Representative Examples of Breaches On Selected Loans.**

9 97. The following are *non-exclusive examples* of breaches committed in connection  
 10 with specific loans. These breaches (set forth in alphabetical order) typify those committed by the  
 11 Defendants on other, similarly situated loans.

12 **1. The Bay Pompano Loan.**

13 98. On or about April 4, 2007, a Bay Pompano Loan direct lender received a copy of an  
 14 offer from the Bay Pompano Borrower which offered to pay the full principal and the full interest  
 15 amount due and owing on the Bay Pompano Loan, as well as an “exit fee” of \$325,000, to Compass.  
 16 On or about April 13, 2007, the Bay Pompano direct lender sent a certified letter to Compass  
 17 requesting that Compass, as loan servicer, accept the offer on behalf of the Bay Pompano direct  
 18 lenders. Compass never replied and never communicated this offer to other Bay Pompano Loan  
 19 direct lenders.

20 99. In a progress report from Compass, Compass stated that it would send an offer to the  
 21 Bay Pompano Loan direct lenders in response to an offer made by the Bay Pompano Borrower on  
 22 May 17, 2007. Compass’s letter requested that the Bay Pompano direct lenders accept payment of  
 23 90% of the principal amount due and owing on the loan and no accrued interest. However, a  
 24 comparison of the Bay Pompano Borrower’s May 17, 2007 offer to Compass’s proposed settlement  
 25 payout showed that Compass, in furtherance of the conspiracy to defraud Plaintiffs, was attempting  
 26 to take over \$2,000,000.00 in fees for itself (and/or for Silar), while the direct lenders would not be  
 27 paid in full.  
 28

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100. Later, the Bay Pompano Borrower made a revised offer of \$16,743.553.46. Again, Compass never communicated this offer to the Bay Pompano Loan direct lenders. Instead of countering or communicating this offer, Compass informed Bay Pompano Loan direct lenders that it would foreclose on the loan collateral. When one Bay Pompano Loan direct lender emailed Compass inquiring about these developments, Compass responded that the Bay Pompano Borrower was not willing to make a full repayment of the loan – *i.e.*, could not pay Compass all of the extra fees it sought for itself – therefore, Compass would foreclose on the loan. Compass refused requests to contact this direct lender by phone to discuss these issues.

101. Compass (and Silar, as the true loan servicer) has failed to meet its fiduciary duties and obligations under the Loan Servicing Agreements by not readily communicating with Plaintiff Bay Pompano, LLC and other direct lenders. While Compass has scheduled status conference calls, often it does not allow the direct lenders to talk to Compass on these calls. Sometimes Compass does not even participate in lender conference calls it has scheduled, which are purportedly for the benefit of the direct lenders and for the purpose of advising and communicating with direct lenders regarding loan status. For example, on or about August 16, 2007, a conference call was scheduled on the Bay Pompano Loan. One Bay Pompano direct lender waited on the call line for 15 minutes without a representative from Compass appearing. In addition, Bay Pompano direct lenders have left numerous messages and sent emails to Compass without receiving responses. These actions clearly violate Compass fiduciary duties and obligations under the Loan Servicing Agreements.

## 2. The Binford Medical Loan.

102. On information and belief, Compass and its managers (and Silar, as the true loan servicer), in violation of their fiduciary duties, wrongfully pursued foreclosure adverse to Plaintiff Binford Lenders, LLC's ("Binford, LLC") and other direct lenders' best interests on the Binford Medical Loan.

103. Notwithstanding the near completeness of the project and the potential for the Binford Medical Borrower to fully satisfy its loan obligations, Compass and its managers (and Silar, as the true loan servicer) recklessly and irresponsibly chose to pursue foreclosure proceedings and risk financial devastation for Plaintiff Binford, LLC and other direct lenders.

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104. Additionally, since Compass took over the USACM loan portfolio, it has consistently ignored communications from Plaintiff Binford, LLC and other direct lenders and failed to provide timely information about the status of the Binford Medical Loan, including accounting information. Because the Binford Medical Loan has been in default for more than two consecutive payments, Compass was required to provide monthly accounting, under Nev. Rev. Stat. § 645B.260(1)(b), but has failed to do so. This also violates Section 2(d) of the Loan Servicing Agreements. These actions (or lack thereof) are in violation of Compass's and Silar's fiduciary duties.

105. As an example, at least one direct lender in the Binford Medical loan sent several emails and letters (including a certified letter) to Compass and its managers requesting loan and accounting information. Compass did not respond. Instead, several members of Plaintiff Binford, LLC and other direct lenders received cease and desist letters from Compass's legal counsel threatening litigation. On information and belief, members of Plaintiff Binford, LLC and other direct lenders received their first communication containing information about the Binford Medical Loan from Compass in a non-loan specific report dated May 18, 2007, 91 days after Compass took over as purported loan servicer. This report stated for the first time that Compass was pursuing foreclosure on the Binford Medical Loan. Members of Plaintiff Binford, LLC and other direct lenders received their first Binford Medical Loan specific correspondence *over five months* after Compass purportedly acquired the servicing rights. This Binford Medical Loan specific correspondence stated that Compass had commenced litigation over an internal dispute with the borrower and developer.

106. Compass, as sub-servicer for Silar and in violation of its fiduciary duties and the Loan Servicing Agreements, has also refused to share critical loan and accounting information with Plaintiff Binford, LLC and other direct lenders so that they can make an informed decision on a proposed discounted payoff negotiated during mediation. Because Plaintiff Binford, LLC and other direct lenders were refused material information, certain Binford Medical Loan direct lenders were forced to reject the proposal.

### 3. The Cabernet Highlands LLC Loan.

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107. On information and belief, Compass and Silar agreed and conspired to have the borrower of the Cabernet Highlands LLC Loan wire loan payoff proceeds, portions of which were due and owing to Plaintiff Cabernet Highlands Lenders, LLC ("Cabernet, LLC") and other direct lenders, directly to the Silar Account. For instance, on or about July 9, 2007, Compass and Silar fraudulently induced the Cabernet Highlands Borrower to make a wire transfer of \$150,246.49 to Silar. Also, on or about August 9, 2007, Compass and Silar fraudulently induced the Cabernet Highlands Borrower to make a wire transfer of \$37,589.35 to Silar. Additionally, on or about September 21, 2007, Compass and Silar fraudulently induced the Cabernet Highlands Borrower to make a wire transfer of \$129,482.73 to Silar. Furthermore, on or about October 12, 2007, Compass and Silar fraudulently induced the Cabernet Highlands Borrower to make a wire transfer of \$36,337.50 to Silar. This Silar controlled account is an interest bearing account.

108. Certain portions of the transferred funds were due and owing to direct lenders in the Cabernet Highlands Loan, including Plaintiff Cabernet, LLC. Subsequently, Silar kept the funds due and owing Plaintiff Cabernet, LLC direct lenders for a period of time, earning interest on monies it did not own. Compass, its managers (Blatt and Piskun), and Silar agreed that Silar would keep the interest earned with the intent to deprive Plaintiff Cabernet, LLC and other direct lenders of the earned interest due and owing to them. Silar then transferred these funds to certain Compass-controlled bank accounts, including the Compass-controlled Maximizer Account, which Silar knew also earned interest. Compass retained these funds in the Maximizer Account for a period of time earning interest on monies due and owing Plaintiffs and other direct lenders. Both Compass and Silar kept the interest earned for their own benefit, with the intent to deprive Plaintiff Cabernet, LLC, and other direct lenders, of these funds.

#### 4. The Charlevoix Loan.

109. The Charlevoix Homes loan went into interest default and maturity default on April 4, 2007. On information and belief, Compass and its managers (and Silar, as the true loan servicer) have made no effort either to negotiate an extension, an act required by the original loan documents, or to send a Notice of Default to Charlevoix Homes.

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110. Additionally, Compass and its managers (and Silar, as the true loan servicer) have failed to provide timely information to Plaintiffs and other direct lenders. For example, on or about August 5, 2007, one direct lender sent Compass an e-mail requesting why no status report had been given to the lenders in this loan since the maturity date. On information and belief, Compass did not respond and to this date has taken no action to resolve the defaulted Charlevoix loan.

**5. The Clear Creek Plantation Loan.**

111. On March 23, 2007, Compass and its managers, in furtherance of the conspiracy to defraud direct lenders, knowingly and intentionally sent a false, fraudulent, and misleading letter through the United States mail to the direct lenders of the Clear Creek Plantation Loan, which requested their approval of a settlement proposal. Through the proposed settlement, the direct lenders would receive 100% of principal, but *no accrued, unpaid interest*. The letter falsely led the direct lenders to believe that the Clear Creek Borrower could not pay accrued interest. This letter was false, fraudulent, and misleading because the members of Plaintiff Clear Creek, LLC and other direct lenders subsequently learned that the Clear Creek Borrower had, in fact, expressly told Compass that it would pay not only the full amount of principal owing on the loan, but also a substantial portion of the accrued, but unpaid interest. Compass gave the Clear Creek Plantation Loan direct lenders only one week in which to respond, to the settlement proposal Compass offered.

112. Certain direct lenders contacted Compass and its managers for information concerning the loan, including the status of the loan, status of the negotiations, and reasons why the Clear Creek Plantation Borrower was unable to pay off the accrued interest due and owing to the direct lenders. Compass and its managers, in clear violation of their fiduciary duties and in furtherance of the conspiracy to defraud direct lenders, never responded. Desperate for information, one day before the deadline imposed by Compass to lodge any objections against the settlement deal, certain direct lenders held a conference call with Clear Creek Plantation Borrower.

113. During this conference call, the direct lenders learned that Compass and its managers had misrepresented the terms of the settlement proposal to the direct lenders and that the Clear Creek Plantation Borrower had expressly offered and was willing to pay off the full unpaid principal balance, *as well as a substantial portion of the accrued interest*. In fact, the Clear Creek Plantation



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1 Borrower had already secured financing specifically intended to pay off all principal and a  
2 significant portion of the accrued interest due and owing to the direct lenders of the Clear Creek  
3 Plantation Loan.

4 114. Furthermore, on or about July 2, 2007, Compass, through Mark Olson, spoke by  
5 telephone to one or more direct lenders in the Clear Creek Plantation Loan and stated that a recent  
6 appraisal of the property showed that there was not enough value in the property to cover the full  
7 amount due and owing on the loan and that the value of the property would only cover the principal  
8 amount of the Clear Creek Plantation Loan and Compass's default interest and other fees, but not  
9 the direct lenders' accrued, but unpaid interest. This statement was apparently false, fraudulent, and  
10 misleading because the "recent appraisal," dated December 29, 2006, showed the "as is" value of  
11 the property as \$6,415,000.00 – *i.e.*, more than the total payoff of the Clear Creek Plantation Loan  
12 (including Compass's alleged fees). Also, the appraisal showed the projected market value of the  
13 property as of July 1, 2007 as \$9,625,000.00, far more than the value of the Clear Creek Plantation  
14 Loan.

15 115. On or about July 11, 2007, the Clear Creek Plantation Borrower paid off the Clear  
16 Creek Plantation Loan in its entirety. At that time and in furtherance of the conspiracy to defraud  
17 direct lenders, Compass and Silar agreed and conspired to have the Clear Creek Plantation Borrower  
18 wire the payoff proceeds in the amount of \$3,923,771.68, portions of which were due and owing to  
19 Plaintiff Clear Creek, LLC and other direct lenders, directly to the Silar Account thereby converting  
20 Plaintiff Clear Creek, LLC's funds. Silar earned interest on the converted funds in the Silar  
21 controlled account which were due and owing to Plaintiff Clear Creek, LLC. Silar has improperly  
22 kept this earned interest for itself, instead of distributing it to Plaintiff Clear Creek, LLC and other  
23 direct lenders, to whom it is owed and belongs.

24 116. On or about July 18, 2007, Silar, in furtherance of the conspiracy to defraud direct  
25 lenders, wired \$3,216,204.61 of the Clear Creek Plantation payoff funds (minus the earned interest  
26 and certain other monies, which Silar converted and kept for itself) to the Compass-controlled  
27 Maximizer Account which Silar knew also earned interest. Compass retained these funds in the  
28 Maximizer Account until on or about August 31, 2007, in violation of NEV. ADMIN. CODE §

1 645A.050(2), and then transferred monies due and owing to Plaintiff Clear Creek, LLC, and other  
2 direct lenders (minus the earned interest, which Compass converted and kept for itself) to the  
3 Disbursement Account. Compass remitted payment, but no earned interest to Plaintiff Clear Creek,  
4 LLC, and other direct lenders, on or about August 31, 2007.

5 117. Both Compass and Silar knowingly converted and kept the interest earned on the  
6 monies due and owing the Direct Lenders for their own benefit with the intent to deprive Plaintiff  
7 Clear Creek, LLC, and other direct lenders, of the funds which belong to them.

8 **6. The Fox Hills 216 and Eagle Meadows Loan.**

9 118. In November 2006, the Fox Hills 216/Eagle Meadows Borrower met with  
10 representatives of Compass, including Piskun, to discuss payoff of the current balance due and  
11 owing to the direct lenders on the Fox Hills 216 Loan which was approximately \$58 million. The  
12 Fox Hills 216 Loan and the Eagle Meadows Loan stem from the same real estate development  
13 project in Los Banos, California.

14 119. Compass, through Piskun, misrepresented to the Fox Hills 216/Eagle Meadows  
15 Borrower that it controlled the Fox Hills 216 Loan, even though at that time the Asset Purchase  
16 Agreement had not yet been signed, and stated that decisions regarding the payoff of the loan would  
17 be made by Compass. Compass, through Piskun, requested the Fox Hills 216/Eagle Meadows  
18 Borrower present a proposal for resolving the Fox Hills 216 Loan.

19 120. The Fox Hills 216/Eagle Meadows Borrower presented two alternative payoff  
20 proposals to Compass in early December 2006. Compass did not respond to the two payoff  
21 proposals sent by the Fox Hills 216/Eagle Meadows Borrower.

22 121. The Fox Hills 216/Eagle Meadows Borrower again contacted Compass and its  
23 managers at the end of February 2007 and offered a third settlement proposal, which Compass did  
24 not respond to until over two weeks later when it demanded a payoff amount of \$70 million,  
25 approximately \$12 million more than the original principal amount of the Fox Hills 216 Loan. The  
26 Fox Hills 216/Eagle Meadows Borrower requested a breakdown of Compass's \$70 million payoff  
27 figure, which Compass refused to provide.  
28

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122. Later, the Fox Hills 216/Eagle Meadows Borrower made a final payoff proposal of \$65 million. In breach of its fiduciary duties and in furtherance of the conspiracy to defraud direct lenders, Compass never communicated the Fox Hills 216/Eagle Meadows Borrower's final payoff offer to the direct lenders, including members of Plaintiff Fox Hills, LLC.

123. Compass's and its managers' (and Silar's, as the true loan servicer) wholly unjustified failures to provide the Fox Hills Loan direct lenders, including members of Plaintiff Fox Hills, LLC, with any of the three settlement proposals, damaged the value of the Fox Hills 216 Loan and the value of the Eagle Meadows Loan, which Plaintiffs Eagle Meadows Lenders, LLC ("Eagle Meadows, LLC") is invested.

124. As a result of Compass's actions in the Fox Hills 216 Loan, at the beginning of November 2007, the Fox Hills 216/Eagle Meadows Borrower filed a lender liability action against members of Fox Hills, LLC and other direct lenders in California state court.

125. Additionally and in furtherance of the conspiracy to defraud investors, Compass, through Blatt and Piskun, collaborated with Silar on a loan to secure certain water rights related to the Fox Hills 216 and Eagle Meadows Loans, which also had the added side benefit of providing a lucrative and secure financial opportunity to Silar. Compass (through Blatt and Piskun) and Silar conspired and agreed that Silar would loan the money necessary to secure the water rights and, in return, Silar would receive a very preferential return on the fully secured loan – to the detriment of Plaintiff Fox Hills, LLC, Plaintiff Eagle Meadows, LLC, and other direct lenders. Because this loan would be labeled as a servicing advance, Silar was guaranteed to make a profitable return on the loan before any direct lender received any payoff on the loan. Blatt and Piskun signed and approved a "Servicing Advance Request" to Silar on or about April 16, 2007 and Silar subsequently loaned this money to Compass in return for a very high interest rate (an 18% interest rate), as well as seniority and cross-collateralization on the loan. This loan was a financial boon to Silar, though it was made at substantial cost and harm to Plaintiff Fox Hills, LLC, Plaintiff Eagle Meadows, LLC, and other direct lenders.

**7. The Gardens Timeshare Loan.**

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126. The Gardens Timeshare loan originated on March 2, 2004 with an original principal balance of \$5,800,000.00. The principal balance, as of June 4, 2007 was \$3,577,719.33.

127. On or about June 4, 2007, Compass sent a communication through the United States mail to the direct lenders of the Gardens Timeshare Loan. In this communication, Compass outlined a “global restructuring” proposal (the “Restructuring Proposal”). After making this Restructuring Proposal, Compass expressed to the direct lenders that the Restructuring Proposal was the best deal the direct lenders could get.

128. The Restructuring Proposal amounted to a modification of the underlying collateral of the loan, along with two other loans on the same project. Compass, its managers, and Silar proposed changing and reducing Plaintiff The Gardens TSHR Lenders, LLC’s (“The Gardens, LLC”) and other direct lenders’ deeded positions in the loans, and elevating their own deeded position (one of the three “Gardens” loans is funded 100% by Compass through their purchase of the FTDF). Compass asked Plaintiff The Gardens, LLC and other direct lenders to consider the proposal with a letter outlining the details of the restructuring which contained incomplete and misleading information.

129. On or about July 20, 2007, Compass sent the direct lenders another communication elaborating on the terms of the Restructuring Proposal. In a conference call with the direct lenders regarding this new communication, Compass once again expressed to the direct lenders that “this is the best you can get.” Based on this Proposal, Compass intended to take almost one-third (1/3) of the original loan balance off the top for “earned fees.”

130. Compass’s proposal included threats of negative impact if direct lenders did not consent to the restructuring of the loans. Compass threatened that it would have to sell the property at foreclosure, resulting in a recovery far less than the lenders’ investments, with the cost to be borne by the direct lenders, or that the borrower would be forced into bankruptcy causing substantial delays. After more than 20 of the direct lenders elected not to agree to the modification, Compass telephoned each dissenting investor, and aggressively campaigned to get the lenders to change their votes by supplying more misleading information.

**8. The Harbor Georgetown Loan.**

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131. On information and belief, the Harbor Georgetown Borrower was attempting to develop and remodel the property underlying the loan. Additionally, although in default, the Harbor Georgetown Borrower was apparently receiving rents for the property from its large tenants, Krogers supermarket and Rite-Aid, which could be used to pay off portions of the Harbor Georgetown Loan. Compass and its managers (and Silar, as the true loan servicer), however, failed to collect any type of payments from the Harbor Georgetown Borrower and remit those payments to Plaintiff Harbor Georgetown Lenders, LLC (“Harbor Georgetown, LLC”) or other direct lenders.

132. On information and belief, Compass and its managers have been unresponsive to calls and other forms of communication from Plaintiff Harbor Georgetown, LLC and other direct lenders about this situation and the status of the loan in general. Compass’s and its managers’ failure to communicate with and respond to Harbor Georgetown Loan direct lenders violates their fiduciary duties and obligations under the Loan Servicing Agreements.

#### 9. The La Hacienda Loan.

133. On information and belief, Compass and Silar agreed to have the borrower of the La Hacienda loan wire loan payoff proceeds, portions of which were due and owing to Plaintiff La Hacienda Lenders, LLC (“La Hacienda, LLC”), and other direct lenders, directly to the Silar Account. Silar kept these funds due and owing the Direct Lenders for a period of time, earning interest on monies it did not own. Compass, its managers, and Silar agreed that Silar would keep the interest earned for their own benefit with the intent to deprive Plaintiff La Hacienda, LLC, and other direct lenders, of these funds.

134. Additionally, despite the payoff of the La Hacienda Loan, Compass and its managers (and Silar, as the true loan servicer) have failed to provide the La Hacienda Loan direct lenders, including Plaintiff La Hacienda, LLC, with an adequate accounting as required.

#### 10. The Lerin Hills Loan.

135. On information and belief, the Lerin Hills Loan was secured by a second lien position. In August of 2006, USACM undertook to negotiate an early payout from the borrower on this under-funded loan. The borrower agreed to pay \$9,552,824.38 (approximately 93% of the original principal balance), and USACM, as servicer, agreed to waive any and all fees and default

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1 interest. The settlement was subject to approval of the Lerin Hills Loan direct lenders and the  
2 bankruptcy court. On December 12, 2006, the bankruptcy court granted authorization to USACM to  
3 effectuate the payoff. However, USACM never collected the payment, presumably because its  
4 assets were auctioned and bought by Compass on December 7, 2006. After Compass took over the  
5 servicing of the loan, Piskun directed Compass to immediately renounced any obligation or  
6 intention of accepting the agreed payoff, and instead unilaterally hiked the payoff amount to  
7 \$17,306,947.38, including \$5 million in late fees, exit fees, and default interest.

8 136. After many weeks without information from Compass and its managers, despite  
9 numerous inquiries, a direct lender called the Lerin Hills Borrower's principal and learned for the  
10 first time that although the borrower had been ready, willing, and able to pay the agreed settlement  
11 amount, Compass had renounced the settlement approved by the bankruptcy court and the Lerin  
12 Hills Loan direct lenders. Although the borrower informed Compass and its managers that there  
13 was no way he could pay \$17.3 million, and that sabotaging the settlement would doom his  
14 development project, Piskun, in violation of his fiduciary duties, told the borrower that he did not  
15 care if the project "burned."

16 137. Compass was well aware of, but asserted that it was not bound by, the agreed upon  
17 and court-approved settlement. Compass also noted that the Lerin Hills Loan direct lenders stood to  
18 lose a significant amount of money unless the Lerin Hills Borrower acquiesced to Compass's  
19 demand for additional money.

20 138. Following Compass's refusal to abide by the agreed to and court authorized  
21 settlement amount, Compass and its managers commenced foreclosure proceedings on April 9,  
22 2007.

23 139. Compass's notice of foreclosure set off a cascade of harmful events, all of which  
24 should have been foreseen by Compass. First, as Compass was aware, the Lerin Hills Loan direct  
25 lenders had a junior lien on the property and an intercreditor agreement with Wachovia Bank not to  
26 commence foreclosure proceedings while the first lien was still outstanding. Compass's noticing of  
27 foreclosure therefore triggered Wachovia's right to accelerate its own loan and to foreclose on the  
28 property, a proceeding which would assuredly all but wipe out any secured interest that the direct

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1 lenders had in the property. Further, Compass's foreclosure posting apparently caused delayed  
2 government approvals, waning interest from builders, the first lien to be moved to Special Assets,  
3 and led to the delay of the project for an additional 12 months. Compass's actions also apparently  
4 made it nearly impossible to refinance either the first or second lien on the property.

5 140. Compass's self-serving declination of the \$9.5 million payoff proposal was to the  
6 detriment of Plaintiff Lerin Hills Lenders, LLC and other direct lenders and a breach Compass's  
7 fiduciary duties and the Loan Servicing Agreements on multiple levels. Further, due to Compass's  
8 actions, the collateral value of the project (and, therefore, the value of the Lerin Hills Loan) has been  
9 severely depressed.

10 **11. The Marlton Square I Loan.**

11 141. Compass sought permission from the Marlton Square I Loan direct lenders to  
12 negotiate a payout with the borrower that would require the direct lenders on the Marlton Square I  
13 Loan to give up 50 percent of their accrued interest while Compass received 100 percent of the  
14 default interest it claimed it was due.

15 142. When Plaintiff Marlton Square I Lenders, LLC ("Marlton Square I, LLC") and other  
16 direct lenders rejected this proposal, Compass then proposed to give the lenders another twenty-five  
17 percent of the accrued interest while it continued receiving the lion's share of the payout. This was  
18 in direct conflict with the best interests of Plaintiff Marlton Square I, LLC and other direct lenders  
19 and in violation of Compass's fiduciary duties and obligations under the Loan Servicing Agreement.

20 **12. The Shamrock Tower Loan.**

21 143. On information and belief, Compass negotiated an agreement whereby a third party  
22 would purchase the Shamrock Tower property in a foreclosure sale for the entire value of the loan  
23 (principal, accrued interest, default interest, late fees, and other fees). However, Compass did not  
24 share this information with Plaintiff Shamrock Tower Lenders, LLC ("Shamrock Tower, LLC") or  
25 other direct lenders.

26 144. Instead, on or about March 2007, Compass and its managers knowingly and  
27 intentionally sent a fraudulent and misleading letter through the United States mail to members of  
28 Plaintiff Shamrock Tower, LLC and other direct lenders in the Shamrock Tower Loan which sought



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1 their approval to accept a “third party” buyer’s offer of 88% of their principal investment and no  
2 accrued interest. This letter was misleading, deceptive, and falsely represented the terms of the  
3 agreement with the third party buyer, who, upon information and belief, was willing to pay 100% of  
4 the direct lenders’ principal investment and all accrued interest, plus certain other fees. Compass  
5 and its managers (and Silar, as the true loan servicer) were fully aware of the misleading nature of  
6 this letter and intended the misleading information to induce members of Plaintiff Shamrock Tower,  
7 LLC and other direct lenders to accept the 88% offer. Several members of Plaintiff Shamrock  
8 Tower, LLC and other direct lenders accepted the offer to their detriment.

9 145. Silar aided this scheme by providing funds to Compass to remove a tax lien that  
10 would have prevented Compass from initiating foreclosure, thereby preventing the subsequent  
11 foreclosure sale and enabling the third party purchase of the property for full value, as negotiated by  
12 and benefiting Compass.

13 146. Additionally, Compass and its managers (and Silar, as the true loan servicer) did not  
14 notify Plaintiff Shamrock Tower, LLC, or other direct lenders, before proceeding to foreclosure. On  
15 information and belief, several members of Plaintiff Shamrock Tower, LLC, and other direct  
16 lenders, contacted Compass and its managers and requested information on the status of the loan  
17 and why they were not notified about the foreclosure (about which they learned second-hand).  
18 Compass and its managers responded to at least one direct lender that it did not need to notify  
19 investors because they had approval from more than 50% of beneficial interest in the Shamrock  
20 Tower Loan. Compass, however, refused to provide proof of this 50% approval.

21 147. Compass and its managers (and Silar, as the true loan servicer), in violation of their  
22 fiduciary duties and obligations under the Loan Servicing Agreements, have failed to provide timely  
23 information to Plaintiff Shamrock Tower, LLC, or other direct lenders, since the foreclosure sale on  
24 August 7, 2007.

### 25 26 **13. The Standard Property Loan.**

27 148. Members of Plaintiff Standard Property Holdings, LLC (“Standard Property, LLC”)  
28 include individual direct lenders (see endnote 1 for the list of members)<sup>i</sup> who have assigned their

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1 interests to Standard Property, LLC. Plaintiff Mojave Canyon, Inc. also invested as a direct lender  
2 in the Standard Property Loan.

3 149. Members of Standard Property, LLC, Plaintiff Mojave Canyon, Inc., and other direct  
4 lenders, through USACM, made a direct loan to Standard Property Development, LLC (the  
5 “Standard Property Borrower”). The loan is commonly known as the “Standard Property Loan.” In  
6 connection with the Standard Property Loan, certain direct lenders, including members of Plaintiff  
7 Standard Property, LLC, executed powers of attorney, pursuant to which they appointed USACM as  
8 their servicer for the Standard Property Loan. As of March 15, 2007, the total principal balance of  
9 the Standard Property Loan was \$9,640,000 (“Standard Property Principal Balance”).

10 150. On February 27, 2006, the Standard Property Borrower executed a Promissory Note  
11 Secured by Mortgage in favor of certain Plaintiffs and other direct lenders (the “Standard Property  
12 Note”), which provides for an interest rate of 12.5% per annum. Pursuant to Section 4 of the  
13 Standard Property Note all payments on the Note were to first be applied toward the payment of  
14 accrued interest.

15 151. Compass and its managers were aware that the Standard Property Borrower was able  
16 to and ready to payoff all principal in the Standard Property Loan, but was concerned that a payoff  
17 would occur prior to Compass taking over the servicing rights from USACM on February 16, 2007.  
18 Therefore, in furtherance of the conspiracy to defraud direct lenders and in order to gain a financial  
19 advantage for Compass and Silar on this loan, on February 2, 2007, Piskun sent the Standard  
20 Property Borrower an email stating that Compass would, in effect, pay the Borrower off by taking  
21 care of the Borrower’s legal expenses if the Borrower would not contact the direct lenders about  
22 settling the loan and would allow Compass to send out the settlement proposal letter *after* it took  
23 over as loan servicer.

24 152. On or about February 2, 2007, Compass, in furtherance of the conspiracy to defraud  
25 direct lenders, knowingly and intentionally sent a misleading letter through the United States mail to  
26 members of Plaintiff Standard Property, LLC, Plaintiff Mojave Canyon, Inc., and all other direct  
27 lenders in the Standard Property Loan which sought their approval to accept the Standard Property  
28 Borrower’s payoff offer of 90% of their principal investment in full satisfaction of the Standard

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Property Loan. This letter was misleading, deceptive, and falsely represented the terms of the agreement with the Standard Property Borrower, who, upon information and belief, was willing to pay 100% of the direct lenders' principal investment. Compass, its managers, and Silar were fully aware of the misleading nature of this letter and intended the misleading information to induce members of Plaintiff Standard Property, LLC, Plaintiff Mojave Canyon, Inc., and other direct lenders to approve the 90% payoff. In response to the false and inequitable terms proposed in Compass's letter, many of the Standard Property direct lenders rejected the payoff proposal and sent a letter to Compass demanding that it accept the Standard Property Borrower's offer to pay of 100% of their principal investment. The direct lenders' letter also informed Compass that they waived all other fees.

153. On or about March 7, 2007, Compass knowingly and intentionally and in furtherance of the conspiracy to defraud direct lenders, sent a false and fraudulent letter through the United States mail to certain members of Plaintiff Standard Property, LLC, Plaintiff Mojave Canyon, Inc., and all other direct lenders in the Standard Property Loan, which sought the approval of 100% of the direct lenders in the Standard Property Loan to an agreement Compass reached with the Standard Property Borrower to pay off the Standard Property Loan. According to that letter, the terms of the payoff included:

- a. The Direct lenders in the loan receive 100% of their unpaid Standard Property Principal Balance;
- b. The Direct lenders do not receive any accrued interest; and
- c. Compass shall release the security interest against Standard Property's real property.

154. Compass, its managers, and Silar were fully aware of the false, fraudulent, and misleading nature of this letter. The letter was false, fraudulent, and misleading because Compass, its managers, and Silar did not tell the Standard Property Loan direct lenders about their continuing plan to take additional money from the Standard Property Borrower in a secret "side deal." Compass, its managers, and Silar knowingly made this side deal in order to avoid paying this money to Plaintiffs and other direct lenders, which was due and owing to them pursuant to the requirement in Section 4 of the Standard Property Note that all payment are to first be applied toward the

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1 payment of accrued interest. This letter was also false, fraudulent, and misleading because  
 2 Compass, its managers, and Silar did not tell the Standard Property Loan direct lenders that, as part  
 3 of its side deal, Compass, its managers, and Silar had agreed, collaborated, and conspired to have  
 4 the Standard Property Borrower wire the additional, non-disclosed money directly to Silar. Silar  
 5 knowingly and intentionally participated in this fraudulent scheme (as part of the conspiracy to  
 6 defraud direct lenders) in order to avoid Standard Property, LLC's, Plaintiff Mojave Canyon, Inc.'s,  
 7 and other direct lenders' rights to these funds and to collect money from the Standard Property Loan  
 8 behind direct lenders' backs. Compass, its managers, and Silar knowingly hid this information from  
 9 members of Standard Property, LLC, Plaintiff Mojave Canyon, Inc., and other direct lenders in  
 10 order to induce them to agree to the payoff.

11 155. In reliance on Compass's misrepresentations in the March 7, 2007 letter, members of  
 12 Plaintiff Standard Property, LLC and other direct lenders constituting 100% of the beneficial interest  
 13 in the Standard Property Loan approved the payoff in accordance with the specific terms of the  
 14 March 7, 2007 letter, *i.e.*, the letter that did not disclose the side payment. Members of Plaintiff  
 15 Standard Property, LLC and other direct lenders did not agree to charging the Standard Property  
 16 Borrower any other fees, including default fees, and did not know that Compass was planning on  
 17 taking and Silar was planning on collecting these monies through a separate side deal with the  
 18 Standard Property Borrower.

19 156. On or about March 13, 2007, USACM, Compass knowingly issued a Payoff  
 20 Statement letter to the Standard Property Borrower (the "Standard Property Payoff Statement"),  
 21 which required the Standard Property Borrower to make a payoff, as of March 15, 2007, in the  
 22 amount of \$10,499,068.15 with a per diem interest accrual of \$2,205.74 for every day after March  
 23 15, 2007. The \$10,499,068.15 payoff consisted of:

- 24 a. Standard Property Principal Balance: \$9,640,000.00
- 25 b. Late Fees: \$47,394.43
- 26 c. Other Fees: \$267,164.11
- 27 d. Default Interest \$544,509.60

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157. The Standard Property Payoff Statement revealed that Compass had entered into a secret agreement with the Standard Property Borrower, undisclosed to the Standard Property Loan direct lenders, whereby Compass (and ultimately Silar) received late fees, other fees and default interest from the Standard Property Borrower, without collecting or distributing accrued regular contractual interest due and owing to the direct lenders. This Payoff Statement also revealed that Compass, its managers, and Silar had agreed and conspired to direct the Standard Property Borrower to wire \$859,068.14 directly to Silar. The Payoff Statement showed the true nature of Compass's false, fraudulent, and misleading letter dated March 7, 2007.

158. On or about March 15, 2007, the Standard Property Borrower paid off the Standard Property Loan pursuant to the terms of the Standard Property Payoff Statement. The Standard Property Borrower complied with Compass's and Silar's direction and wired \$859,068.14 directly to Silar. This wire transfer is fraudulent because the funds should have been used to pay members of Plaintiff Standard Property, LLC, Plaintiff Mojave Canyon, Inc., and other direct lenders accrued interest pursuant to the loan documents and Loan Servicing Agreements. Compass did not pay the direct lenders any of the accrued interest they were owed, but took the available funds for itself (and ultimately for Silar) as so-called default interest, late fees and "other fees" totaling \$859,368.14.

**14. The 60th Street Venture Loan.**

159. In May 2007, the first lien holder on the 60th Street Venture property, Bank of America, notified a 60th Street Venture Loan direct lender that it was Bank of America's intention to foreclose on the property. Because the 60th Street Venture Loan was in a second lien position, foreclosure would effectively extinguish the loan and any direct lender's investments. Bank of America subsequently brought suit against all subordinate lien holders to place itself in a position to foreclose. On information and belief, Compass and its managers (and Silar, as the true loan servicer) had full knowledge of the pending foreclosure and legal action, but did not inform Plaintiff 60th Street Venture Lenders, LLC ("60<sup>th</sup> Street Venture, LLC") or other direct lenders.

160. Due to Compass's failure to respond to the 60th Street Venture Loan direct lender requests, some direct lenders raised a legal defense fund of approximately \$5,000 which they used to acquire legal advice and representation.

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161. Although the Bank of America lien was bought out by Silver Point Capital, Silver Point continued the litigation. On June 6, 2007, a 60th Street Ventures Loan direct lender received an email from a representative at Silver Point stating that it was his belief that Chicago Title has been unable to secure any commitment from Compass to release the second mortgage on ten units in the 60th Street Ventures Loan. The Silver Point representative explained that without such release, the sales of those ten units could not close, and therefore, the continuation and completion of the already filed foreclosure action was necessary. Once again, the direct lender attempted to contact Compass and its managers. Compass, in breach of its fiduciary duties, never responded.

16. **The BarUSA Loan, Bay Pompano Loan, Castaic II Loan, Castaic III Loan, Copper Sage Loan, Fiesta Murietta Loan, Palm Harbor I Loan, and Tapia Ranch Loan.**

162. In furtherance of their conspiracy to defraud the direct lenders, on information and belief, Compass, its managers (Blatt and Piskun), and Silar conspired and agreed to have the borrowers of the BarUSA Loan, Bay Pompano Loan, Castaic II Loan, Castaic III Loan, Copper Sage Loan, Fiesta Murietta Loan, Palm Harbor I Loan, and Tapia Ranch Loan wire loan payoff proceeds, portions of which are due and owing to Plaintiff BarUSA Lenders, LLC, Plaintiff Bay Pompano Lenders, LLC, Plaintiff Castaic Partners II Lenders, LLC, Plaintiff Castaic Partners III Lenders, LLC, Plaintiff Copper Sage II Lenders, LLC, Fiesta Murietta Lenders, LLC, Palm Harbor I Lenders, LLC, and Tapia Ranch Lenders, LLC and other direct lenders, directly to the Silar Account when these proceeds are paid out. This Silar controlled account is an interest bearing account. This agreement was reached with the intent and plan that Silar will keep these funds due and owing the Plaintiffs and other direct lenders for a period of time, enabling Silar to earn interest on monies it does not own. Compass, its managers (Blatt and Piskun), and Silar have, upon information and belief, agreed that Silar will keep the interest earned for its own benefit and with the intent to deprive Plaintiffs and other direct lenders of these funds.

**F. Other Wrongful Acts Of Defendants.**

163. In addition to the many breaches of contract, fraud, breaches of fiduciary duty, and violations of Nevada law committed by Compass, Silar, Blatt, and Piskun, some examples of which

are described above, upon information and belief, Compass and its managers have also contacted one or more third parties, with whom many of the Plaintiffs have been engaged in negotiations for prospective financing of Plaintiffs' legal and operating expenses in connection with this matter. Compass's and its managers' actions were for the sole and wrongful purpose of interfering with such negotiations and damaging Plaintiffs' ability to secure such financing. These communications are wholly unjustified, malicious, and can serve no legitimate purpose, but are, in fact, an attempt to harm Plaintiffs.

## II.

### CLAIMS FOR RELIEF

#### FIRST CLAIM FOR RELIEF

(Declaratory Relief Set Forth by All Plaintiffs Against Compass, Silar and/or Asset Resolution)

164. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 163 as though fully set forth herein.

165. An actual, ripe, and justifiable controversy has arisen and now exists between Plaintiffs and Compass and/or Asset Resolution, as purported loan servicer(s), and between Plaintiffs and Silar, as actual loan servicer, as follows:

- a. Plaintiffs contend that Silar is their actual loan servicer pursuant to Compass's sale, transfer, and conveyance of all rights title and interests in the Purchased Assets to Silar, as well as Silar's foreclosure on Compass, and that Compass and/or Asset Resolution are the sub-servicer of the loans. Compass, Silar, and Asset Resolution, however, contend that Compass and/or Asset Resolution are the ultimate servicer(s) of the loans and that Silar is merely Compass's and/or Asset Resolution's financier.
- b. Plaintiffs contend, pursuant to the Promissory Notes executed by the respective borrowers in favor of Plaintiffs and other direct lenders, that payments made by borrowers are first to be applied to accrued non-default rate interest and then to principal, and then to post-bankruptcy default interest and late fees, and that this priority may only be altered by the direct lenders in each loan. Compass and/or Asset Resolution, however, contend that all payments by borrowers are first applied to pay Compass and Asset Resolution default interest, late fees, and other fees.
- c. Plaintiffs contend, pursuant to the Plan, that Compass and/or Asset Resolution are not entitled to default interest, late fees, or loan servicing fees that accrued prior to the sale of the Purchased Assets. Compass and/or Asset Resolution, however, contend that they are entitled to default interest, late fees, and servicing fees, regardless of when accrued.



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- d. Plaintiffs contend, based upon Compass's and/or Asset Resolution's breaches of Loan Servicing Agreements, that Compass and/or Asset Resolution are not entitled to any compensation provided for in section 5 of the Loan Servicing Agreements. Compass and/or Asset Resolution contends, however, that they have an absolute right to collect all fees described in section 5, regardless of when accrued, and irrespective of any conduct by Compass and/or Asset Resolution in breach of the Loan Servicing Agreements.
- e. Plaintiffs contend that a lender in a loan secured by real property has an absolute right to modify the terms of their Promissory Note and Deed of Trust to maximize their recovery, irrespective of the rights of any third-party loan servicer. Compass and/or Asset Resolution contend, however, that Plaintiffs have no right to modify the terms of the Promissory Notes and Deeds of Trust with the third-party borrower.
- f. Plaintiffs contend that Compass, Silar and/or Asset Resolution must comply with Nevada laws pertaining to loan servicing. Compass, Silar, and/or Asset Resolution however, contend that they are not required to comply with Nevada laws pertaining to loan servicing.
- g. Plaintiffs contend, pursuant to NEV. ADMIN. CODE § 645A.050, that Compass, Silar and/or Asset Resolution must remit payment of payoff proceeds to Plaintiffs within 30 days following the end of the month in which payment from the Borrower was collected. Compass, Silar and/or Asset Resolution, however, as evidenced by the handling of the Clear Creek Plantation Loan and other loans, do not agree and do not believe they need to comply with § 645A.050.
- h. Plaintiffs contend that Compass, Silar and/or Asset Resolution, through their joint efforts, have violated NEV. REV. STAT. § 645B.175(4) by not depositing all money paid in full or in partial payment of a loan secured by a lien on real property into an account appropriately named to indicated that it does not belong to Compass and controlled by a person who is independent of the parties, Compass, Silar and/or Asset Resolution maintain, however, that they are under no obligation to abide by the requirements of § 645B.175(4).
- i. Plaintiffs contend that Compass, Silar and/or Asset Resolution are not authorized to retain interest earned on monies due and owing Plaintiffs and other direct lenders. Compass, Silar and/or Asset Resolution, however, maintain that they are entitled to keep this interest even though it was earned on money that did not belong to either Compass, Silar and/or Asset Resolution.
- j. Plaintiffs contend, pursuant to NEV. REV. STAT. § 645B.185, that each direct lender was required to receive from Compass, Silar, and/or Asset Resolution a Mortgage Investment Disclosure Form, approved by the NMLD. Plaintiffs have never received or signed a Mortgage Investment Disclosure Form, therefore, Plaintiffs have not received the required disclosures from Compass and/or Asset Resolution. Upon information and belief, Compass, Silar and/or Asset Resolution contend they are under no obligation to abide by the requirements of § 645B.185.
- k. Plaintiffs contend that Compass, Silar and/or Asset Resolution have violated NEV. REV. STAT. § 645B.260 by failing to make monthly reports to the NMLD Commissioner and to Plaintiffs regarding loan delinquencies as required under the statute. Upon information and belief, Compass, Silar

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and/or Asset Resolution contend that they are not required to comply with § 645B.260 and provide required monthly reports.

1. Plaintiffs contend, pursuant to NEV. REV. STAT. § 645B.330, that as a result of the maturity of various loans in the USACM portfolio and the fact that a single power of attorney has improperly been used as a basis to act for more than one loan, Compass and/or Asset Resolution no longer have a valid power of attorney to act on behalf of Plaintiffs on such loans. Compass and/or Asset Resolution, however, maintain they still has the power and authority to act on Plaintiffs' behalf in serving their loans and continues to purport to act on Plaintiffs' behalf.
- m. Plaintiffs contend, pursuant to NEV. ADMIN. CODE § 645B.073, that Plaintiffs and other direct lenders have an absolute right to replace Compass and/or Silar and/or Asset Resolution as loan servicer in any loan, provided 51% of the beneficial interests of the Loan have made the decision to do so. Plaintiffs further contend they terminated Compass as servicer pursuant to this statute and/or the Loan Servicing Agreements in May 2007. Compass and/or Asset Resolution contend, however, that they cannot be terminated as loan servicer based solely on NEV. ADMIN. CODE § 645B.073.
- n. Plaintiffs contend that they are entitled to terminate specific Loan Servicing Agreements with Compass and/or Asset Resolution by virtue of Compass's and/or Asset Resolution's actions and/or inactions, which breached the Loan Servicing Agreements. Plaintiffs are informed and believe, however, that Compass and/or Asset Resolution contend Plaintiffs are not entitled to terminate the Loan Servicing Agreements.
- o. In the alternative, Plaintiffs contend that the Loan Servicing Agreements are void and/or voidable under Nevada law and/or general principles of contract law. Compass and/or Asset Resolution, however, contend the Loan Servicing Agreements are enforceable across multiple loans.
- p. Upon information and belief, Plaintiffs contend that Compass and/or Silar and/or Asset Resolution may have violated other sections of the Nevada Revised Statutes and Administrative Code, which discovery may reveal.

166. A determination of the disputes set forth in paragraph 161 above is necessary and appropriate at this time in order to resolve the adverse interests of Plaintiffs, on the one hand, and Compass, Silar, and Asset Resolution on the other hand.

## **SECOND CLAIM FOR RELIEF**

### **(Breach of Contract Set Forth By All Plaintiffs Against Compass, Silar and/or Asset Resolution)**

167. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 166 as though fully set forth herein.

168. Plaintiffs have performed all of their obligations under the Loan Servicing Agreements, as well as all conditions precedent to the performance of Compass's, Silar's and/or Asset Resolution's obligations thereunder.

169. Compass, as purported loan servicer, and Silar and/or Asset Resolution, as actual loan servicer(s), have breached and continue to breach the Loan Servicing Agreements by:

- a. failing to produce, keep, and maintain appropriate accounting records on each loan, as required by section 2(b) of the Loan Servicing Agreements;
- b. failing to provide the direct lenders with regular statements setting forth the status of each loan, as required by section 2(d) of the Loan Servicing Agreements;
- c. failing to pay accrued interest on loans to Plaintiffs as contractually required as and when collected from the borrowers;
- d. failing to communicate certain offers made by borrowers to repay their loans to the direct lenders;
- e. negotiating with borrowers on terms favorable to their own interests, and to the substantial detriment of Plaintiffs;
- f. misrepresenting the status of loans to Plaintiffs;
- g. taking funds from borrowers that were available to pay accrued interest on loans to Plaintiffs, to pay to themselves default interest, late fees and other fees instead;
- h. applying principal and interest payments made by borrowers to pay themselves so-called "loan origination" fees;
- i. striking secret deals with borrowers, pursuant to which Compass and/or Silar have received undisclosed payments from borrowers, when Plaintiffs and other direct lenders have not first received payment in face of principal and accrued regular interest from borrowers;
- j. failing to diligently collect all payments due, as required by section 2(c)(i) of the Loan Servicing Agreements;
- k. failing to promptly pay Plaintiffs principal and accrued regular interest, as required by section 2(c)(i) of the Loan Servicing Agreements;
- l. failing to use their business judgment to fully protect the interest of the direct lenders, as required by section 2(c)(ii) of the Loan Servicing Agreements;
- m. failing to protect the direct lenders' interests, as required by Section 11 of the Loan Servicing Agreements;
- n. failing to insure ad valorem property taxes are paid current on property securing the respective loans; and
- o. failing to comply with Nevada law as set forth herein.

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170. Compass, Silar and/or Asset Resolution have also breached, and continue to breach, the Loan Servicing Agreements, which are expressly governed by Nevada law, because neither Compass, Silar nor Asset Resolution is licensed as a mortgage broker/agent in Nevada in fact and Compass has been ordered by the State of Nevada to cease and desist the performance of its obligations under the Loan Servicing Agreements. Therefore, Compass, Silar and/or Asset Resolution are unable lawfully to perform their required services under the Loan Servicing Agreements, which inability and failure are also breaches of the Agreements.

171. As a result of Compass's, Silar's and/or Asset Resolution's breaches of the Loan Servicing Agreements enumerated above, each of the Plaintiffs seeks damages for the breach(es) of the specific Loan Servicing Agreement(s) applicable to each Plaintiff with respect to such Plaintiff's loan in an amount to be proven at trial.

### **THIRD CLAIM FOR RELIEF**

#### **(Breach of Fiduciary Duty Set Forth by All Plaintiffs Against All Defendants)**

172. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 171 as though fully set forth herein.

173. Compass and/or Asset Resolution, as purported loan servicers their managers (including Blatt and Piskun) and Silar, as actual loan servicer, owe a fiduciary duty to Plaintiffs under the Loan Servicing Agreements.

174. Compass, Asset Resolution, Blatt, Piskun, and Silar breached their fiduciary duties to Plaintiffs by:

- a. failing to produce, keep, and maintain appropriate accounting records on each loan;
- b. failing to provide the direct lenders with regular statements setting forth the status of each loan;
- c. failing to pay accrued interest on loans to Plaintiffs as contractually required as and when collected from the borrowers;
- d. failing to communicate certain offers made by borrowers to repay their loans to the direct lenders;
- e. negotiating with borrowers on terms favorable to their own interests, and to the substantial detriment of Plaintiffs;

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- f. misrepresenting the status of loans to Plaintiffs;
- g. taking funds from borrowers that were available to pay accrued interest on loans to Plaintiffs, to pay to themselves default interest, late fees and other fees instead;
- h. applying principal and interest payments made by borrowers to pay themselves so-called "loan origination" fees;
- i. striking secret deals with borrowers, pursuant to which Compass and/or Silar have received undisclosed payments from borrowers, when Plaintiffs and other direct lenders have not first received payment in face of principal and accrued regular interest from borrowers;
- j. failing to diligently collect all payments due;
- k. failing to promptly pay Plaintiffs principal and accrued regular interest;
- l. failing to use their business judgment to fully protect the interest of the direct lenders;
- m. failing to protect the direct lenders' interests;
- n. failing to insure ad valorem property taxes are paid current on property securing the respective loans;
- o. claiming entitlement to pre-bankruptcy interest and fees which it did not receive from USACM or FTDF; and
- p. failing to comply with Nevada law as set forth herein.

175. As a result of Compass, Asset Resolution, and their managers (including Blatt and Piskun), and Silar breaching their fiduciary duties to Plaintiffs, each of the Plaintiffs seek redress in connection with the specific breach(es) of fiduciary duty applicable to each Plaintiff with respect to such Plaintiff's loan in an amount to be proven at trial in this matter.

#### **FOURTH CLAIM FOR RELIEF**

**(Breach of the Implied Covenants of Good Faith and Fair Dealing  
Set Forth by All Plaintiffs Against Compass, Silar and/or Asset Resolution)**

176. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 175 as though fully set forth herein.

177. Compass and Asset Resolution, as purported loan servicers, and Silar, as actual loan servicer, owe(d) Plaintiffs a duty of good faith and fair dealing arising from the Loan Servicing Agreement.

178. Plaintiffs imposed a special element of reliance on Compass, Silar and/or Asset Resolution as their loan servicer(s). Compass, Silar and/or Asset Resolution stand in a superior and entrusted position, particularly when negotiating the payoff of the loans and in performing all other services under the Loan Servicing Agreements.

179. Compass, Silar and/or Asset Resolution breached the duty of good faith and fair dealing they owed to Plaintiffs by:

- a. failing to produce, keep, and maintain appropriate accounting records on each loan;
- b. failing to provide the direct lenders with regular statements setting forth the status of each loan;
- c. failing to pay accrued interest on loans to Plaintiffs as contractually required as and when collected from the borrowers;
- d. failing to communicate certain offers made by borrowers to repay their loans to the direct lenders;
- e. negotiating with borrowers on terms favorable to their own interests, and to the substantial detriment of Plaintiffs;
- f. misrepresenting the status of loans to Plaintiffs;
- g. taking funds from borrowers that were available to pay accrued interest on loans to Plaintiffs, to pay to themselves default interest, late fees and other fees instead;
- h. applying principal and interest payments made by borrowers to pay themselves so-called "loan origination" fees;
- i. striking secret deals with borrowers, pursuant to which Compass and/or Silar have received undisclosed payments from borrowers, when Plaintiffs and other direct lenders have not first received payment in face of principal and accrued regular interest from borrowers;
- j. failing to diligently collect all payments due;
- k. failing to promptly pay Plaintiffs principal and accrued regular interest;
- l. failing to use their business judgment to fully protect the interest of the direct lenders;
- m. failing to protect the direct lenders' interests;

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- n. failing to insure ad valorem property taxes are paid current on property securing the respective loans;
- o. claiming entitlement to pre-bankruptcy interest and fees which it did not receive from USACM or FTDF; and
- p. failing to comply with Nevada law as set forth herein.

180. As a result of Compass's, Silar's and/or Asset Resolution's breaches of the implied covenants of good faith and fair dealing, each of the Plaintiffs seek redress in connection with the specific breach(es) applicable to each Plaintiff with respect to such Plaintiff's loan in an amount to be proven at trial as a result of Compass, Silar and/or Asset Resolution breaching the duty of good faith and fair dealing.

#### **FIFTH CLAIM FOR RELIEF**

(Constructive Fraud Set Forth by Cabernet Highlands Lenders, LLC, Clear Creek Plantation Lenders, LLC, The Gardens Timeshare Lenders, LLC, La Hacienda Lenders, LLC, Lerin Hills Lenders, LLC, Shamrock Tower Lenders, LLC, Standard Property Holdings Lenders, LLC, Mojave Canyon Inc., and Robert J. Kehl & Ruth Ann Kehl Against All Defendants)

181. Plaintiffs reallege and incorporates by reference each and every allegation contained in paragraphs 1 through 180 as though fully set forth herein.

182. Compass and Asset Resolution, as purported loan servicers, their managers (including Blatt and Piskun), and Silar, as actual loan servicer, owed Plaintiffs legal and equitable duties arising from their fiduciary and confidential relationship.

183. Compass, Asset Resolution, their managers (including Blatt and Piskun), and/or Silar (through the acts or omissions of its subservicer(s) Compass and/or Asset Resolution) breached their duties to Plaintiffs by misrepresenting the actual negotiated terms of loan payoffs and by misrepresenting their entitlement to receive a calculated portion thereof.

184. Compass, Asset Resolution, their managers (including Blatt and Piskun), and/or Silar (through the acts or omissions of its subservicer(s) Compass and/or Asset Resolution) breached their duties to Plaintiffs by concealing or misrepresenting material terms of the loan payoffs from Plaintiffs .

185. Compass, Asset Resolution, their managers (including Blatt and Piskun), and/or Silar (through the acts or omissions of its subservicer(s) Compass and/or Asset Resolution) breached its



1 duties to Plaintiffs by misrepresenting the terms and/or amounts of payoff offers made by borrowers  
2 and third party buyers.

3 186. Compass, Asset Resolution, their managers (including Blatt and Piskun), and/or Silar  
4 (through the acts or omissions of its subservicer(s) Compass and/or Asset Resolution) breached their  
5 duties to Plaintiffs by concealing or misrepresenting the terms and/or amounts of payoff offers made  
6 by borrowers and third party buyers.

7 187. Compass and Silar breached their duties to Plaintiffs by concealing the fact that they  
8 have earned and kept for themselves interest on monies due and owing to Plaintiffs while such  
9 monies are in the possession of Compass and Silar.

10 188. Plaintiffs have suffered damages in an amount to be proven at trial as a result of the  
11 constructive fraud by Compass, Asset Resolution, their managers, and Silar as set forth herein.

### 12 **SIXTH CLAIM FOR RELIEF**

13 (Fraudulent Misrepresentation Set Forth by Clear Creek Plantation Lenders, LLC, Fox Hills 216  
14 Lenders, LLC, Shamrock Tower Lenders, LLC, Standard Property Holdings Lenders, LLC, Mojave  
15 Canyon Inc., Robert A. Kehl & Tina M. Kehl, Robert J. Kehl & Ruth Ann Kehl, and Kevin McKee  
16 Against All Defendants)

17 189. Plaintiffs reallege and incorporate by reference each and every allegation contained  
18 in paragraphs 1 through 188 as though fully set forth herein.

19 190. Compass, Asset Resolution, as purported loan servicers, their managers (including  
20 Blatt and Piskun), and/or Silar, as actual loan servicer, have made material false representations to  
21 Plaintiffs and/or have failed to disclose material facts as set forth above in connection with proposed  
22 resolutions of the Standard Property Loan, the Clear Creek Plantation Loan, the Shamrock Tower  
23 Loan, and the Fox Hills 216 Loan.

24 191. Compass, Asset Resolution, their managers (including Blatt and Piskun), and/or Silar  
25 (through the acts or omissions of its subservicer(s) Compass and/or Asset Resolution) knew or  
26 believed that their representations regarding the negotiated terms of settlement proposals and third  
27 party buyout offers referenced above were false.

28 192. Compass, Asset Resolution, their managers (including Blatt and Piskun), and/or Silar  
(through the acts or omissions of its subservicer(s) Compass and/or Asset Resolution) intended to

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1 induce Plaintiffs to act upon their misrepresentations by approving the settlement proposals or  
2 accepting the third party buyout offers.

3 193. Plaintiffs justifiably relied on these misrepresentations and/or nondisclosures and, in  
4 some cases, approved settlement proposals or buyout offers, such as the Standard Property Loan  
5 settlement proposal and Shamrock Tower Loan buyout offer, in reliance upon such  
6 misrepresentations and/or nondisclosures.

7 194. As a result of Compass's, Asset Resolution's, their managers' (including Blatt and  
8 Piskun), and Silar's fraudulent misrepresentations and/or nondisclosures, Plaintiffs have suffered  
9 damages in an amount to be proven at trial.

### 10 **SEVENTH CLAIM FOR RELIEF**

11 (Conversion Set Forth by Cabernet Highlands Lenders, LLC, Clear Creek Plantation Lenders, LLC,  
12 La Hacienda Lenders, LLC, Standard Property Holdings Lenders, LLC, Mojave Canyon Inc.,  
Robert J. Kehl & Ruth Ann Kehl Against All Defendants)

13 195. Plaintiffs reallege and incorporate by reference each and every allegation contained  
14 in paragraphs 1 through 194 as though fully set forth herein.

15 196. Compass, Silar, and/or Asset Resolution have wrongfully and knowingly exerted  
16 dominion and control over loan proceeds which belong to Plaintiffs and other direct lenders,  
17 including, but not limited to the proceeds from borrower payments involving the Standard Property  
18 Loan, Clear Creek Plantation Loan, La Hacienda Loan, Cabernet Highlands LLC Loan.

19 197. For example, Compass, Silar, and/or Asset Resolution agreed to have the borrowers  
20 of these and other loans wire payoff proceeds, portions of which were due and owing to Plaintiffs  
21 and other direct lenders, directly to the Silar Account. Silar kept these funds due and owing  
22 Plaintiffs, and other direct lenders, for substantial periods of time, earning interest on monies it did  
23 not own. On more than one occasion, Silar transferred such funds to the Compass/Asset  
24 Resolution-controlled Maximizer Account which Silar knew also earned interest. Compass and/or  
25 Asset Resolution retained these funds in the Maximizer Account for a period of time, and then  
26 transferred monies due and owing Plaintiffs and other direct lenders (sans interest earned) to the  
27 Disbursement Account. Compass then remitted payment to Plaintiffs and other direct lenders from  
28 the Disbursement Account. Both Compass, Silar Compass, Silar, and/or Asset Resolution kept the

1 interest earned on the monies due and owing Plaintiffs and other direct lenders for their own benefit  
 2 with the intent to deprive Plaintiffs of these funds all without the knowledge or consent of the  
 3 adversely affected Plaintiffs.

4 198. Compass's, Asset Resolution's and/or Silar's taking of Plaintiffs' loan proceeds and  
 5 interest earned on money belonging to Plaintiffs is inconsistent with, and in derogation, exclusion  
 6 and defiance of, Plaintiffs' right, title and interest in those proceeds and earned interest.

7 199. As a result of Compass's, Asset Resolution's and/or Silar's conversion of Plaintiffs  
 8 loan proceeds and interest earned, Plaintiffs have suffered damages in an amount to be proven at  
 9 trial.

#### 10 **EIGHTH CLAIM FOR RELIEF**

11 (Civil Conspiracy Set Forth by BarUSA Lenders, LLC, Bay Pompano Lenders, LLC, Cabernet  
 12 Highlands Lenders, LLC, Castaic Partners II Lenders, LLC, Castaic Partners III Lenders, LLC, Clear  
 13 Creek Plantation Lenders, LLC, Copper Sage II Lenders, LLC, Fiesta Murrieta Lenders, LLC, La  
 14 Hacienda Lenders, LLC, Palm Harbor One Lenders, LLC, Shamrock Towers Lenders, LLC,  
 15 Standard Property Holdings Lenders, LLC, Tapia Ranch Lenders, LLC, Charles B. Anderson Trust,  
 16 Rita O. Anderson Trust, Mojave Canyon Inc., Warren Hoffman Family Investments, LP, Patrick J.  
 17 Anglin, Judy Bonnet, Christina M. Kehl, Daniel J. Kehl, Robert J. Kehl & Ruth Ann Kehl, Robert  
 18 A. Kehl & Tina M. Kehl, Kevin Kehl, Kevin Kehl as Guardian of Andrew Kehl, Kevin Kehl as  
 19 Guardian of Susan Kehl, Krystina L. Kehl, and Cynthia Winter Against All Defendants)

20 200. Plaintiffs reallege and incorporate by reference each and every allegation contained  
 21 in paragraphs 1 through 199 as though fully set forth herein.

22 201. Upon information and belief, Silar had knowledge of and participated in the  
 23 formation of Compass's (and subsequently Asset Resolution's) business plan and objective to  
 24 maximize loan fees, despite any harm to Plaintiffs, when it financed Compass's purchase of the  
 25 USACM assets and rights (which were subsequently sold to Silar).

26 202. Compass, Asset Resolution, their managers (including Blatt and Piskun), and Silar  
 27 had knowledge of Plaintiffs' rights to loan proceeds paid by borrowers per their obligations under  
 28 the Promissory Notes when default interest, late fees, and other fees were charged to lenders and  
 when they directed the loan proceeds to themselves and away from Plaintiffs.

203. Additionally, Compass, Asset Resolution, their managers (including Blatt and  
 Piskun), and/or Silar had knowledge of and agreed to have borrowers of certain loans wire payoff  
 proceeds, portions of which were due and owing to certain Plaintiffs and other direct lenders,

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1 directly to the Silar Account. At times, Silar would transfer these funds to the Compass/Asset  
2 Resolution-controlled Maximizer Account which Silar knew also earned interest. Both Compass,  
3 Asset Resolution and/or Silar kept the interest earned on the monies due and owing Plaintiffs, and  
4 other direct lenders, with the intent to deprive them of these funds.

5 204. Compass and/or Asset Resolution, through their managers (including Blatt and  
6 Piskun), and together with Silar, worked in concert and with the intent to deprive Plaintiffs of  
7 proceeds from certain loan payoffs, as well as to deprive Plaintiffs of other loan payments and  
8 interest earned, contrary to the rights of Plaintiffs.

9 205. Blatt and Piskun, the principals and beneficiaries of Compass, formed and operated  
10 Compass, facilitated by the financing provided by Silar, for the purpose of conducting activities  
11 prohibited by Nevada law and detrimental to Plaintiffs.

12 206. Compass, Asset Resolution, Piskun, Blatt, and Silar, by acting in concert, knowingly  
13 intended to accomplish Compass's and/or Asset Resolution's business plan, including unlawful  
14 objectives (as detailed above and incorporated herein), for the purpose of benefiting themselves,  
15 individually and collectively, and with the knowledge of, and disregard for, the fact that they were  
16 harming Plaintiffs.

17 207. Plaintiffs have suffered damages, in an amount to be proven at trial, resulting from  
18 the concerted acts of Compass, Asset Resolution, Blatt, Piskun, and Silar.

### 19 20 21 **NINTH CLAIM FOR RELIEF**

#### 22 **(Constructive Trust Requested by All Plaintiffs Against Compass, Silar and Asset Resolution)**

23 208. Plaintiffs reallege and incorporate by reference each and every allegation contained  
24 in paragraphs 1 through 207 as though fully set forth herein.

25 209. Compass and Asset Resolution, as purported loan servicers, and Silar, as actual loan  
26 servicer, owe(d) fiduciary and other duties constituting a confidential relationship with Plaintiffs.  
27 Additionally, Silar has knowledge of Compass's and Asset Resolution's heightened relationship  
28

1 with Plaintiffs and, by obtaining, controlling, and retaining loan proceeds due and owing to  
 2 Plaintiffs, Silar has placed itself in a position of trust and confidence with Plaintiffs.

3 210. Compass, Silar Compass, Silar, and/or Asset Resolution have inequitably taken,  
 4 retained, and/or controlled loan proceeds belonging to Plaintiffs. These actions are against  
 5 Plaintiffs' rights.

6 211. Plaintiffs have suffered damages resulting from Compass, Silar and/or Asset  
 7 Resolution improperly taking, retaining, and controlling loan proceeds belonging to Plaintiffs.

8 212. To the extent that Compass, Silar and/or Asset Resolution have received loan  
 9 proceeds or other funds rightfully belonging to Plaintiffs, their retention of the loan proceeds would  
 10 be inequitable and the imposition of a constructive trust is essential to effectuate justice and to  
 11 ensure the protection of Plaintiffs' rights in and to those proceeds.

### 12 **III.**

#### 13 **DEMAND FOR JURY TRIAL**

14 213. Plaintiffs assert their right under the Seventh Amendment to the U.S. Constitution  
 15 and demand, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

### 16 **IV.**

#### 17 **PRAYER FOR RELIEF**

18 214. WHEREFORE, Plaintiffs respectfully request judgment as follows:

- 19 a. For a declaration by this Court that Silar is the actual servicer of the Loans  
 20 and that Compass and/or Asset Resolution is, in fact, Silar's subservicer of  
 21 the Loans;
- 22 b. For a declaration by this Court that payments made by borrowers on loans  
 23 shall first be applied to accrued, non-default interest, then to principal, and  
 24 then to accrued, post-bankruptcy default interest and late fees (pre-bankruptcy  
 25 default interest and late fees were waived in the Confirmation Order) if  
 26 collected, subject only to the rights of the direct lenders on a specific loan to  
 27 designate a different sequence of payment;
- 28 c. For a declaration by this Court that neither Compass, Silar nor Asset  
 Resolution is entitled to default interest, late fees, and servicing fees prior to  
 the sale of the Purchased Assets;
- d. For a declaration by this Court that Compass and/or Asset Resolution is not  
 entitled to any compensation under section 5 of the Loan Servicing  
 Agreements;

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- e. For a declaration by this Court that Plaintiffs and other direct lenders have an absolute right to modify the terms of their Promissory Notes and Deeds of Trust with borrowers to maximize their recovery;
- f. For a declaration by this Court that Compass, Silar and Asset Resolution must comply with Nevada laws pertaining to loan servicing.
- g. For a declaration by this Court that Compass, Silar and or Asset Resolution must remit payment of payoff proceeds to Plaintiffs within 30 days following the end of the month in which payment from the Borrower was collected as required by NEV. REV. STAT. § 645A.050.
- h. For a declaration by this Court that Compass, Silar and/or Asset Resolution must deposit all money paid in full or partial payment of a loan secured by a lien on real property into an account appropriately named to indicate that it does not belong to Compass or Silar as required by NEV. REV. STAT. § 645B.175(4).
- i. For a declaration that Compass, Silar and or Asset Resolution may not retain interest earned on monies due and owing to Plaintiffs and direct lenders, but must distribute this money on a pro rata basis to the Plaintiffs and direct lenders to whom it is owed.
- j. For a declaration by this Court that Compass, Silar and/or Asset Resolution must make the disclosures required by NEV. REV. STAT. § 645B.185;
- k. For a declaration that Compass, Silar and/or Asset Resolution have failed to make monthly reports to the NMLD Commissioner and Plaintiffs and other direct lenders regarding loan delinquencies as required by NEV. REV. STAT. § 465B.260.
- l. For a declaration by this Court that Compass and/or Asset Resolution does not have a valid power of attorney to act on behalf of Plaintiffs on such Loans;
- m. For a declaration by this Court that Plaintiffs, together with other direct lenders making up 51% of the beneficial interests of any loan, have the absolute right under NEV. ADMIN. CODE § 645B.073 and the Loan Servicing Agreements to terminate Compass as loan servicer for each loan to designate a new loan servicer or loan servicers to service the loans and properly exercised that right in May 2007;
- n. For a declaration by this Court that Compass's and/or Asset Resolution's actions and omissions described above constitute breaches of the Loan Servicing Agreements and violations of Compass's fiduciary duty to Plaintiffs so as to render the Loan Servicing Agreements terminated with respect to Compass's and/or Asset Resolution's rights pertaining to all loans in which Plaintiffs are direct lenders;
- o. In the alternative, for a declaration by this Court that all Loan Servicing Agreements provisions, specifically relating to Compass's and/or Asset

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- Resolution's right to service the loans are void and/or voidable under Nevada law and/or general principles of contract enforcement;
- p. For an award of actual damages against Compass in an amount in excess of \$75,000, to be proven at trial in this matter;
  - q. For an award of actual damages against Silar in an amount in excess of \$75,000, to be proven at trial in this matter;
  - r. For an award of actual damages against Blatt in an amount in excess of \$75,000, to be proven at trial in this matter;
  - s. For an award of actual damages against Piskun in an amount in excess of \$75,000, to be proven at trial in this matter;
  - t. For an award of actual damages against Asset Resolution in an amount in excess of \$75,000, to be proven at trial in this matter;
  - u. For an award of punitive damages against all Defendants in an amount to be determined by the jury;
  - v. For the imposition of a constructive trust on funds received by Compass, Silar and/or Asset Resolution to which they are not so entitled;
  - w. For an award of Plaintiffs' reasonable attorneys' fees;
  - x. For costs of suit incurred herein; and
  - y. For such other and further relief, whether at law or in equity, as this Court deems just and proper.

DATED: August \_\_\_\_, 2009

BICKEL & BREWER

LISA A. RASMUSSEN

JONES VARGAS

By: /s/ Janet L. Chubb  
JANET L. CHUBB, ESQ.  
LOUIS M. BUBALA III, ESQ.

Attorneys for the Direct Lenders named above  
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Edwin E. Arnold  
Harriet Bender, Trustee  
Robert B. and Paula S. Bender  
Peter & Deidre Capone, JTWROS  
Tracy Cavin Family Trust  
Bernard Cohen  
Gareth A.R. Craner Trustee of the Gareth  
A.R. Craner Trust  
George A. DiGioio  
Doyle Family Trust  
Charles B. Dunn, IV Trustee  
William F. Dupin  
Ellis L. Elgart & Sivia V. Elgart Trustees for  
the Ellis L. Elgart Revocable Living Trust  
dated 7/08/02  
Sagrario T. Evers  
Farrah Family Trust 9/17/03  
Seymour Frank

Ronald G. Gardner  
Hartmann Trust 1997  
Diane H. Higgins  
Milton P. Kaplan M.D. Profit Sharing Plan  
G. Robert & Christina G. Knoles  
Reneé Leff-Kaplan  
Joseph E. Mele  
Don D. Meyer and Dennis E. Hein  
Wesley L. & Jeannie M. Monroe, JTWROS  
Daniel D. Newman  
Robert L. Ogren Trust  
Robert A. Schell  
Michael Shubic  
Robert Speckert  
Robert and Nancy Turner  
Nancy and Kenneth Zawacki

**CERTIFICATE OF SERVICE**

1. On August \_\_\_\_\_, 2009, I served the following document(s):

**THIRD AMENDED COMPLAINT FOR DECLARATORY RELIEF,  
INJUNCTIVE RELIEF, AND DAMAGES**

**JURY DEMAND**

2. I served the above-named document(s) by the following means to the persons as listed below:

■ a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

- **Joshua S. Akbar**  
jakbar@sonnenschein.com
- **Mark Albright**  
gma@albrightstoddard.com
- **Lindsay Nicole Alleman**  
lalleman@fulbright.com
- **Michael W. Anglin**  
anglin@fulbright.com
- **Patrick Anglin**  
tbw@jonesvargas.com
- **Reid L Ashinoff**  
rashinoff@sonnenschein.com
- **Anthony W. Austin**  
aaustin@lrlaw.com
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tbw@jonesvargas.com
- **Judy A. Bonnet**  
tbw@jonesvargas.com
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georganne.bradley@bullivant.com,mary.opatrny@bullivant.com
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9 b. **United States mail, postage fully prepaid** (list persons and addresses):

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I declare under penalty of perjury that the foregoing is true and correct.

DATED this \_\_\_\_ day of August, 2009.

	/s/	
Name		Signature